



# E | R | A

ENERGY INVESTMENT RISK ASSESSMENT

2021

ECOWAS-NIGERIA



◆ COMMON RULES FOR **GLOBAL ENERGY SECURITY**



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## **NIGERIA-ECOWAS EXTENDED ENERGY INVESTMENT RISK ASSESSMENT 2021 ENERGY CHARTER SECRETARIAT PUBLICATION**

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# ABOUT THE INTERNATIONAL ENERGY CHARTER

In the early 1990s, after the end of the Cold War, the Dutch Prime Minister at the time, Ruud Lubbers, took the initiative to establish cooperation in the field of energy between the East and the West. This paved the way for the Energy Charter Treaty (ECT) which was signed in December 1994 at Lisbon and entered into force in April 1998.

The ECT establishes a unique multilateral legal framework for facilitating international energy cooperation. Its key principles, namely, openness of energy markets, investment protection and non-discrimination stimulate foreign direct investment and cross-border trade. As of 1 April 2021, the ECT has 56 Signatories and Contracting Parties (including the European Union and Euratom).

The *International Energy Charter* is the informal working name of the Energy Charter Conference, its subsidiary bodies and the ECS. The name was adopted in 2016 to better reflect the global nature of the Organisation.

The Energy Charter Conference is the governing and decision-making body of the Organisation. Each year its Chairmanship is entrusted to a different Contracting Party of the ECT. In 2021, Armenia holds the Chairmanship. The 99 Members and Observers of the Energy Charter Conference represent governments and regional intergovernmental organisations from six continents, including all significant energy producing, transit and consuming regions.

The Energy Charter Secretariat is based in Brussels, Belgium. It is headed by Secretary-General Urban Rusnák. The main functions of the Secretariat include:

**Providing administrative support and facilitating the work of the Energy Charter Conference and its subsidiary bodies;**

**| Monitoring the implementation of the ECT;**

**Assisting governments in enhancing their investment climate through various instruments;**

**Offering support for dispute settlement and conflict resolution;**

**Developing regulation and model agreements for cross-border energy projects;**

**Organising capacity building and training sessions related to the ECT;**

**| Assisting Observer countries with ECT accession.**

# FOREWORD

At the outset, I would like to commend the Federal Government of Nigeria for using the COVID-19 pandemic as an opportunity to build back better, accelerate clean energy access, encourage economic resilience and create jobs for its growing young population. Over the last year, the Federal Government of Nigeria has introduced a package of new fiscal measures, policies, laws and programmes to give energy investors confidence and legal certainty in these uncertain times.

International and regional cooperation has been – and will continue to be – one of our most effective tools to increase investment in the energy sector and improve the economic situation of countries. In this context, it is a privilege for the Energy Charter Secretariat to provide the Nigerian energy sector with technical assistance and policy support through the Energy Investment Risk Assessment (EIRA) report in cooperation with key national and international stakeholders.

Nigeria's 2021 Extended EIRA Country Profile has been developed under the purview of the AGoSE technical assistance project to improve governance in the energy sector of the ECOWAS (Commission of the Economic Community of West African States) Member States. The AGoSE project is funded by the European Union (EU) and implemented by ECOWAS with the support of various partners. We are grateful to the EU, ECOWAS, the Energy Commission of Nigeria, and the Federal Government of Nigeria for this collaboration and their support of the EIRA report. We hope that this report will give an impetus to policy, legal, and regulatory reforms to attract and retain investment in Nigeria's energy industry.

Building on the policy recommendations and support provided through EIRA from 2018 onwards, the 2021 Extended EIRA Country Profile of Nigeria reflects on the progress made by the Federal Government of Nigeria in meeting its energy priorities. I am pleased the findings of this report

signal that the Federal Government of Nigeria is making good progress in revitalising the energy sector, securing affordable and reliable energy access, and working towards its international commitments under the Paris Agreement. To this end, in 2021, it submitted to the UNFCCC Secretariat Nigeria's final updated NDC with more ambitious climate change adaptation and mitigation plans and CO<sub>2</sub> emission reduction targets. The relevant ministries and agencies are already developing a robust policy framework to implement the updated NDC commitments by adopting the National Adaptation Plan Framework in 2020 and the National Climate Change Policy in 2021.

I also congratulate the Energy Commission of Nigeria for successfully organising, in 2021, the second National Energy Summit despite the pandemic making physical meetings and discussions challenging. The event, focusing on energy sufficiency and sustainable economic growth in Nigeria, brought together key national and international stakeholders to reflect upon the experiences and opportunities from global energy cooperation. During the Summit, the Energy Charter Secretariat also released the 2019 Extended EIRA Country Profile of Nigeria.

I hope that the 2021 Extended EIRA Country Profile of Nigeria will assist the Federal Government of Nigeria in making correct policy choices and driving the implementation of much-needed reforms to ensure the Nigerian people have access to affordable, reliable and clean energy.

**Urban Rusnák**  
Secretary-General  
Energy Charter Secretariat  
Brussels

# MESSAGE FROM THE NATIONAL FOCAL POINT

Energy Commission of Nigeria (ECN) is the Federal Government Agency charged with the responsibility for strategic planning and coordination of national policies in the field of energy in all its ramifications. It is the National Focal Point for the International Energy Charter (IEC).

The Energy Investment Risk Assessment (EIRA) programme of the IEC **“evaluates specific risks affecting energy investments to policy, legal and regulatory frameworks. It aims to identify gaps, provide learning opportunities, and simulate reforms which make the investment climate of countries more robust and reduce the possibility of investor-state disputes”**. It is in the light of this that Nigeria EIRA 2021 Report will thereby facilitate the attraction of foreign direct investments, particularly in the oil and gas and electricity sub-sectors. Nigeria requires investment to grow its oil reserve from 34 billion in 2020 to 40 billion barrels by 2030 and production level from about 2mb/day to 4mb/day, while gas flares is to be brought to zero. Its refineries operated at an average of 12.41% capacity utilization in 2020, whereas gas infrastructure is grossly inadequate for industrial, commercial and domestic use. Electricity consumption by capita is paltry less than 200kWh/cap, with electricity access put at about 60%. Thus, opportunities exist for investment in the Nigeria energy sector to support Nigeria’s desire to expand and grow its economy at about 7% in an inclusive manner.

The IEC is therefore commended for its EIRA initiative and Nigeria will continue to be part of the programme in order to close the investment gap in the energy sector for sustainable national development.

## **Prof. Eli Jidere Bala**

Director General ECN and National Focal Point for IEC

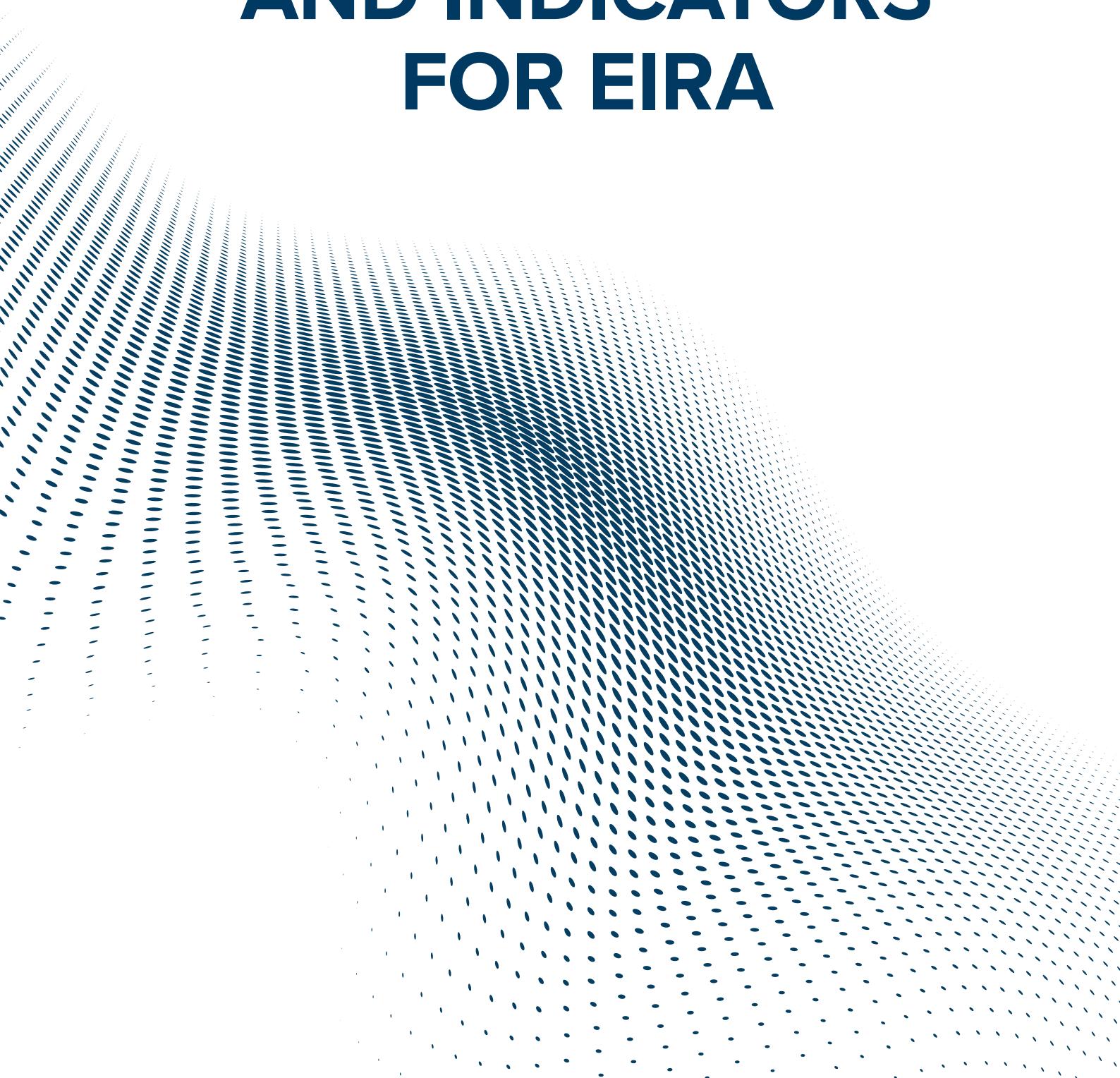
# ABBREVIATIONS

|        |   |
|--------|---|
| BIT    | Bilateral Investment Treaty                           |
| DC     | Direct Current  |
| DisCos | Distribution Companies                                |
| DPR    | Department of Petroleum Resources                     |
| ECN    | Energy Commission of Nigeria                          |
| ECOWAS | Economic Community of West African States             |
| ECS    | Energy Charter Secretariat                            |
| ECT    | Energy Charter Treaty                                 |
| EIRA   | Energy Investment Risk Assessment                     |
| EITI   | Extractive Industries Transparency Initiative         |
| FDI    | Foreign Direct Investment                             |
| GenCos | Generation Companies                                  |
| GHG    | Greenhouse Gas  |
| GWh    | Gigawatt Hour   |
| IECh   | International Energy Charter                          |
| MDA    | Ministries, Departments and Agencies                  |
| MW     | Megawatt  |
| NDC    | Nationally Determined Contributions                   |
| NEITI  | Nigerian Industries Transparency Initiative           |
| NERC   | Nigerian Energy Regulatory Commission                 |
| NESI   | Nigerian Electricity Supply Industry                  |
| NIPC   | Nigerian Investment Promotion Commission              |
| NGN    | Nigerian Naira  |
| NNPC   | Nigerian National Petroleum Corporation               |
| PPA    | Power Purchase Agreement                              |
| REA    | Rural Electrification Agency                          |
| TCN    | Transmission Company of Nigeria                       |
| TES    | Total Energy Supply                                   |
| UNFCCC | United Nations Framework Convention on Climate Change |
| USD    | United States Dollar                                  |

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# **RISK AREAS AND INDICATORS FOR EIRA**



EIRA evaluates risks to energy investment that can be mitigated by adjusting policy, legal and regulatory frameworks. The performance of countries against the EIRA risk areas is evaluated through four indicators. The indicators reward countries for sound regulation and efficient processes, and capture their ability to cope with the risks through predictable policy objectives, transparent decision-making, strong public institutions, competent market oversight mechanisms, and the successful resolution of investor-State disputes.

## What are the risks assessed by EIRA?

EIRA analyses the following risk areas:

### **Unpredictable policy and regulatory change**

Governments reserve the right to adopt policy and regulatory measures that are necessary to pursue legitimate public policy objectives. Nevertheless, unsystematic and arbitrary modifications can detrimentally affect the interests of foreign investors. They can lead to increased or stranded costs for operating a business, reduced attractiveness of investment, and an overall distorted competitive landscape. Foreign investors may reconsider investing in the country or relocate the investment. It follows that in exercising their right to regulate, governments must make investors aware of the conditions and nature of policy and regulatory changes.

### **Discrimination between domestic and foreign investors**

Foreign investors need clarity on the extent to which markets are competitive and whether they offer a level playing field. While discrimination can take various forms, e.g. between energy

resources, technologies and types of investors, EIRA focuses on discrimination between domestic and foreign investors. This risk area assesses the likelihood of an unfair advantage to local investors, as recipients of rights and privileges, to the exclusion of foreign investors, and “protectionist” practices that give rise to foregone investment gains.

### **Breach of State obligations**

Disputes brought by investors against a State can disrupt the relations between the two parties and even damage the overall investment climate. Investors must have confidence that they will have recourse to mechanisms for dispute resolution and the enforcement of rights if governments default on their obligations. Such obligations include protection against discrimination, expropriation and nationalisation, breach of investment treaties, and limited access to alternative dispute settlement avenues.

## How are the EIRA indicators selected?

The indicators are constructed from a wide range of variables. They are premised on the objective of governments to guarantee investors a secure, favourable, and transparent investment environment.

Five criteria are applied to determine the appropriate indicators:

**Functionality/actionability** – The indicators are “reform-oriented”. They reflect best practices through which countries can manage the risks, and capture aspects of policy-making and regulation that are under the control of governments.

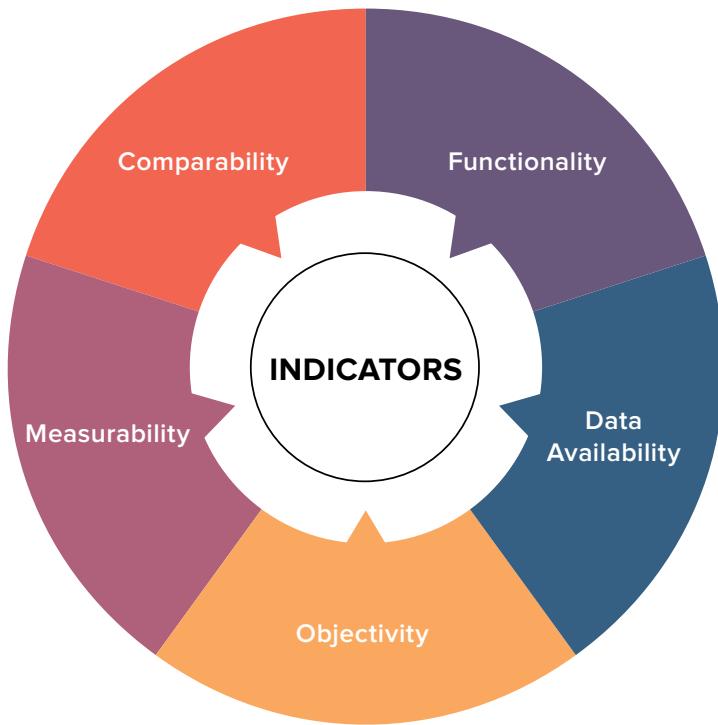
**Data availability** – Data for the indicators is available from sources that are reputable and reliable. The indicators are based on data that is relevant, readily accessible and easy to collect.

**Measurability** – The indicators provide a quantifiable assessment, are robust, and unaffected by minor changes to their construction methodology.

**Comparability** – The indicators remain comparable over time, and across countries, energy sub-sectors, and the energy value chain.

**Objectivity** – The indicators reflect an accurate overview of the policy, regulatory and legal reality in the countries.

Figure I.1 – Criteria for selection of indicators



## What are the EIRA indicators?

Based on the above criteria, the EIRA indicators developed are:

- | Foresight of policy and regulatory change
- | Management of decision-making processes
- | Regulatory environment and investment conditions
- | Rule of law (compliance with national and international obligations)

The indicators apply to more than one risk, and consist of two sub-indicators each. They measure the ability of governments to identify whether the assessed risks exist, and the extent to which they can mitigate these risks. The indicators reward countries for taking concrete measures to manage and limit arbitrary or discriminatory policy changes, and for reducing the possibility of breaches of State obligations. Such measures include setting long-term policy objectives and goals, ensuring transparency in decision-making, granting equal treatment to domestic and foreign investors, and effectively managing disputes with foreign investors.

Table I.1 – Correlation between EIRA risk areas and indicators

| RISK AREAS   | INDICATORS                                |   |  |             |
|--|---|---|--|-------------|
|  | Foresight of policy and regulatory change | Management of decision-making processes | Regulatory environment and investment conditions | Rule of law |
| <b>Unpredictable policy and regulatory change</b>            | ✓   | ✓                                       |  | ✓           |
| <b>Discrimination between domestic and foreign investors</b> |   | ✓                                       | ✓  | ✓           |
| <b>Breach of State obligations</b>                           |   |   |  | ✓           |

## **INDICATOR 1**

### **Foresight of policy and regulatory change**

National energy priorities and regulatory frameworks evolve in response to changing circumstances. Ensuring stable investment conditions is a significant challenge as the global energy transition is proving to be a highly dynamic process. Policy and investment patterns are likely to evolve as countries seek to decarbonise their energy sectors under the Paris Agreement. Meeting new objectives will result in policy revisions, and governments must be able to anticipate the impact of these revisions on long-term investments. They must, therefore, communicate any adjustments to their energy policy objectives well in advance, and have a realistic plan to implement these adjustments with minimal impact on the country's investment climate. Investors can then better manage risk, modify investment portfolios and cope with the policy changes.

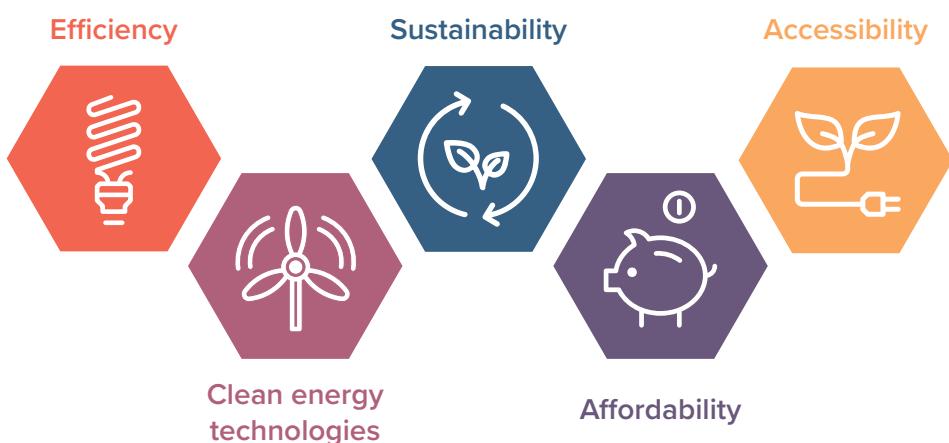
#### **SUB-INDICATOR:**

##### **COMMUNICATION OF VISION AND POLICIES**

This sub-indicator evaluates whether governments are effectively communicating their short- and long-term energy sector vision to investors. It looks into the immediate and future energy sector targets of countries, and the timely adoption and implementation of policies and action plans.

Risk management requires a view of the future. As countries transition to sustainable energy systems, there will be new demands placed upon regulatory frameworks and existing decision-making structures. Understanding the energy landscape, and how it is evolving, is a central element of investment planning. National policies are the most relevant documents for informing investors about the goals governments intend to pursue, and the timeframes they have set for achieving these goals. Accordingly, governments must make investors aware of their current and future national energy priorities, and of any course corrections in these priorities, by adopting clear and timely energy policies. By doing so, they will be able to retain the confidence of investors better, keep them updated on the need, pace and nature of policy changes, and in turn, avert risk.

Figure I.2 – Energy priorities under the UN Sustainable Development Goal 7



## INDICATOR 2

### Management of decision-making processes

The second indicator addresses the importance of coordinated and transparent policies in eliminating perceived or actual opacity of government initiatives, and the inclusion of investors in the planning and decision-making phases. The roles and responsibilities of the national and sub-national government levels must be clear to ensure structured and simplified decision-making processes. It is also essential that investors are well informed and consulted whenever governments intend to revise laws or regulations. Stakeholder engagement will allow foreign investors to participate in decision-making processes actively and take well-informed and timely decisions.

#### SUB-INDICATOR:

##### INSTITUTIONAL GOVERNANCE

Formulating investment and energy policies requires the engagement of multiple government levels. Provinces, municipalities as well as regional and local authorities participate in framing and implementing these policies. Multi-level governance can make the decision-making process complex and result in the risk of overlapping or contradictory decisions. Unless managed and coordinated correctly, policy choices of countries with multi-layered governance structures may end up being sub-optimal, and in turn, inadequately implemented.

This sub-indicator measures how well governments coordinate the decision-making process in their respective countries. While the degree of centralisation in each country may differ significantly, one central body should ultimately be responsible for coordinating across different levels of government, and for reconciling the diverging perspectives of public agencies. Effective intra-governmental coordination in policy design and implementation is, therefore, an essential precondition for minimising unpredictability and maintaining an investment-friendly climate.

#### SUB-INDICATOR:

##### TRANSPARENCY

Policy and regulatory changes that are systematised and transparent give investors time to plan and align their business models, operations, and finances according to the changing circumstances. While transparency is beneficial to all types of investors, it is particularly crucial for foreign investors who have to cope with regulatory systems and administrative frameworks that may be unfamiliar to them. This sub-indicator measures inclusiveness shown by governments in designing and implementing their laws and policies.

EIRA understands transparency as (1) the effective communication of information on national laws, regulations and practices that may materially affect investments, and (2) prior notification of and consultation on regulatory changes that are of interest to investors.

Governments can enhance the quality and predictability of their regulatory framework by reviewing and publishing administrative decisions, codifying legislation, disseminating regulatory materials, and developing registers of the existing and proposed regulation. These measures will help to ensure that investors are aware of policies affecting them. Prior consultation on investment- and energy-related governmental actions can provide investors with more foresight on the conditions in the host countries. For instance, it may reveal indirect discrimination in secondary measures, even though the enabling legislation does not intend for this. Moreover, affording interested parties the right to comment on policy options and regulatory decisions will allow policy-makers, legislators and regulators to take stock of different opinions, parameters and considerations before modifying the existing framework.

Figure I.3 – Key aspects of effective decision-making processes



## INDICATOR 3

### Regulatory environment and investment conditions

This indicator evaluates the independence energy regulators exercise in taking decisions, setting tariffs, and in performing their functions. Regulatory independence guarantees neutrality and helps to avoid situations where decisions are continuously revised, to the detriment of some market actors and investors. The indicator further examines the restrictions faced by foreign investors in the energy sector. Despite the increasing realisation that international capital flows are crucial for developing the energy sector, persisting restrictions tend to deter foreign investors. Key FDI restrictions include investment screening, local content and other performance requirements, and limitations on currency and investment-related capital transfers.

#### SUB-INDICATOR:

##### REGULATORY EFFECTIVENESS

When an independent and specialised institution monitors the market, there is a lower risk of biased decision-making, discriminatory rules, and anticompetitive behaviour. Political distance gives regulatory authorities credibility because it limits governmental influence, and provides investors assurance that political events will not interfere with regulatory decision-making.

This sub-indicator examines the autonomy of energy regulators through various parameters, such as their legal basis, sources of funding, financial accountability to independent institutions, and their relationship to ministries and other public authorities. It also assesses the level of transparency exercised in the selection of the regulatory staff.

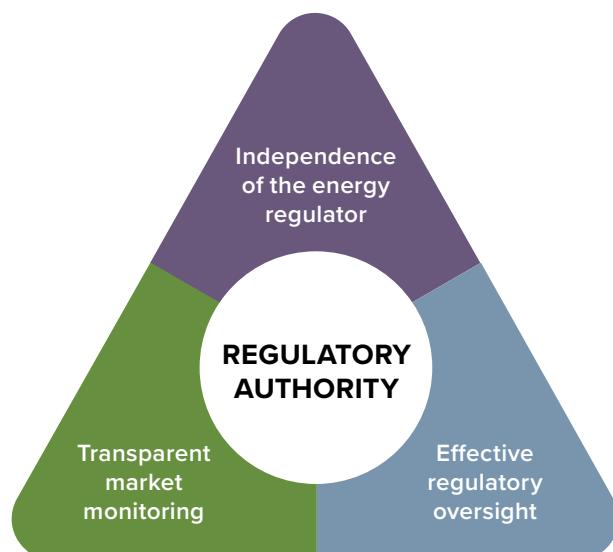
#### SUB-INDICATOR:

##### RESTRICTIONS ON FOREIGN DIRECT INVESTMENT

Policy and regulatory measures that discriminate between domestic and foreign firms can restrict inward investment flows. They can obstruct foreign investments or make the cost of operation financially unviable. Some of the typical restrictive measures foreign investors may face are lengthy investment screening and approval procedures, regional investment restrictions, and operational controls.

This sub-indicator assesses the commitment of countries to accord non-discriminatory treatment to foreign investors. It evaluates whether domestic and foreign investors receive equal treatment in the application of domestic laws and regulations, and gives particular attention to sectoral restrictions, limits on the transfer of profit and repatriation of capital abroad, and onerous local content requirements.

Figure I.4 – Regulatory environment and investment conditions



## INDICATOR 4

### Rule of law (compliance with national and international obligations)

EIRA relies on the “rule of law” definition presented in the UN Report *The rule of law and transitional justice in conflict and post-conflict societies*<sup>1</sup>. It focuses on three aspects of this definition. First, fair and effective implementation of national laws and international commitments arising from treaties and international agreements; second, settlement of investor-State disputes promptly and according to due process; and third, respect for the property rights of foreign investors. Peace, security and human rights are outside the purview of EIRA.

#### SUB-INDICATOR:

##### MANAGEMENT AND SETTLEMENT OF INVESTOR-STATE DISPUTES

This sub-indicator examines the efficiency of case-management and dispute settlement procedures. International companies tend to invest in low-risk host countries that provide them with transparent and predictable legislation, avoid retrospective changes to laws, and make efforts to resolve disputes through alternative dispute resolution mechanisms, without unnecessary cost or delay.

Well-organised judicial procedures help to foster trust between investors and the State. Timely and cost-effective enforcement of foreign judgements and awards give investors assurance that the domestic courts of host countries will safeguard and uphold their rights. Similarly, the existence of appeal mechanisms and domestic dispute mitigation instruments, such as an investment ombudsperson and mediation, provide additional avenues for resolving conflicts between investors and States. Beyond the national legal system, governments must provide an extra layer of protection to investors by granting them recourse to dispute settlement mechanisms under international law. They may give foreign investors this benefit either through BITs or on a case-by-case basis.

#### SUB-INDICATOR:

##### RESPECT FOR PROPERTY RIGHTS

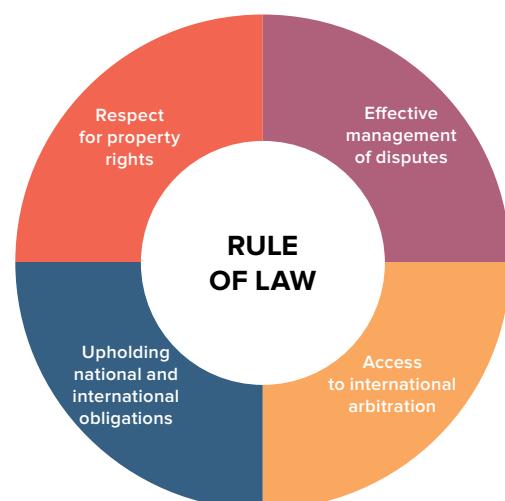
This sub-indicator assesses the risk of companies losing ownership, or control, over their investment as a result of government action. Arbitrary acquisition of property by the State can also lead to the risk of discrimination when foreign investors, in particular, suffer a loss.

In this sub-indicator, the term “investment” refers to tangible and intangible assets, including IP rights. It does not delve into the forms of expropriation. Instead, it focuses on whether expropriation,

nationalisation or confiscation (or any action equivalent to these) was undertaken for a legitimate public purpose, following the due process of law, in a non-discriminatory manner and with adequate compensation.

There are some steps governments may take to reduce the risk of perceived arbitrariness. For instance, they should define in the national laws (1) activities and areas of “public interest” that are grounds for expropriation, (2) the process for determining expropriation compensation, and (3) a timeframe for paying the compensation. These details will give increased security to foreign investors operating under BITs, and also protect investors not covered under these treaties. Investors will also be able to assess better whether the host country’s laws, mechanisms and guarantees are in line with international practice and investment agreements.

Figure I.5 – Rule of law elements covered by EIRA



<sup>1</sup> EIRA interprets “rule of law” as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”. United Nations, Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies* (2004). UN Member States reaffirmed their commitment to uphold “rule of law” in the United Nations, Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the National and International Levels, A/RES/67/1 (30 November 2012).

# **EIRA METHODOLOGY**



EIRA assesses three types of risk to energy investment. It applies four indicators to (1) identify the actions needed to address these risks, and (2) highlight the corrective measures countries may take to mitigate them.

EIRA evaluates risks by examining whether countries have adopted the necessary laws, policies and implementation actions. However, legislation and policy measures have maximum impact when they are enforced. EIRA 2021 recognises this and tries to give a clearer picture regarding the enforcement of laws and policies. This year, the country profile of Nigeria reflects the implementation of the existing policy framework and highlights the progress made by the country in translating its commitments to actions. The report also contains an annex summarising the actions taken by the Federal Government of Nigeria (FGN) to implement the improvements suggested in the previous editions of EIRA. Depending on the progress made, the FGN's progress is categorised as fully implemented, partially implemented, ongoing, or pending.

There has been no change to the methodology since last year. The indicator scores are derived from a questionnaire, developed over two years, which allows comparability across energy sub-sectors and captures trends over time. The questions are designed to be user-friendly and ensure that the responses received can be easily verified. While most of them are binary, requiring simple "yes" or "no" answers, some are cascading and multiple-choice. The EIRA website allows respondents to give detailed information, clarifications and additional remarks on each question.

## How are the respondents for EIRA selected?

The EIRA questionnaire is provided to the national governments in the participating countries. It is also sent to selected external parties to counter the perception of self-assessment and secure an objective viewpoint.

The unit of analysis for EIRA is a country. The policies taken into consideration are those framed and implemented at national level. In federal arrangements, such as the Federal Republic of Nigeria, the central government is designated as a single point of contact responsible for collecting and processing inputs from relevant ministries/departments at State and municipal level.

External parties are chosen from a pool of experts comprising local and international law firms, legal practitioners, business councils, accounting and consulting firms, think-tanks, energy associations, chambers of commerce, international institutions and non-governmental organisations operating in the assessed countries. Before inviting external parties to participate in the assessment, the ECS conducted extensive research on various aspects, such as their expertise, renown, and previous participation in other international reports. All the final participants contributed to the report pro-bono.

The main parameters for selecting the external parties are:

**Expertise in the energy sector:** Active involvement in different stages of energy projects, and experience of providing consulting services in multiple energy sub-sectors and on regulatory issues.

**Diversity of clients and neutrality:** Vast experience working with governmental entities as well as private investors. This ensures the external party has a holistic understanding of issues in the energy sector and contributes to a more balanced approach.

**Reputation:** Parties with extensive global reach or local partner groups. For law firms, international guides identifying leading providers of legal services (local and global) in each country are consulted.

## What is the data collection and validation process for EIRA?

Data was collected in a standardised manner through the EIRA questionnaire. The ECS received responses from the national government focal point and the external parties over five months. The respondents provided copies of the source documentation to support their responses. The questionnaire responses, and the supporting documents, were collected through the EIRA website.

The answers provided by the respondents were accepted only to the extent that they relied on laws, regulations, national plans, and strategies that are currently in force. The cut-off date was 1 April 2021. Accordingly, the scores are based only on legislation, regulation, policies, legislative initiatives and regulatory reforms that came into force before this date.

Upon receiving responses to the questionnaire, the ECS in-house experts engaged in an extensive data-validation process. They confirmed that the respondents correctly understood each question, and that the submitted documents supported the responses. In the absence of supporting documents, or if respondents gave conflicting answers, the ECS experts sought clarifications from government officials and external parties through correspondence and phone interviews.

The ECS took steps to address the issue of low data availability in certain countries, but the spread of the COVID-19 pandemic made this challenging. At the same time, the national government focal point, namely the ECN, and external parties made substantial efforts to ensure that the ongoing global crisis has minimal impact on the report's quality by providing the ECS with exhaustive information and documents, and continual updates.

Overall, the process of data collection and validation lasted eight months, from December 2020 to July 2021.

Figure I.6 – Data collection and validation process



## How are risks assessed in EIRA?

EIRA assesses countries through a quantitative and qualitative analysis. The quantitative assessment is by a scoring system that shows the performance of the countries on the EIRA indicators. The qualitative evaluation is through “country profiles” that describe their strengths and identify areas for improvement.

### Scoring system

All indicators carry equal weight. The score of each indicator is the average of its component sub-indicators. The score of each sub-indicator

is calculated through a set of questions. The questions are scored between 0 and 100 and are equally weighted. The highest possible score for each question is 100. All the scores are rounded off for the risk areas and the indicators. A country’s total indicator score is the average of (1) the score received on the government questionnaire, and (2) the combined average of the external party scores.

Figure I.7 – Scoring an indicator for individual respondents

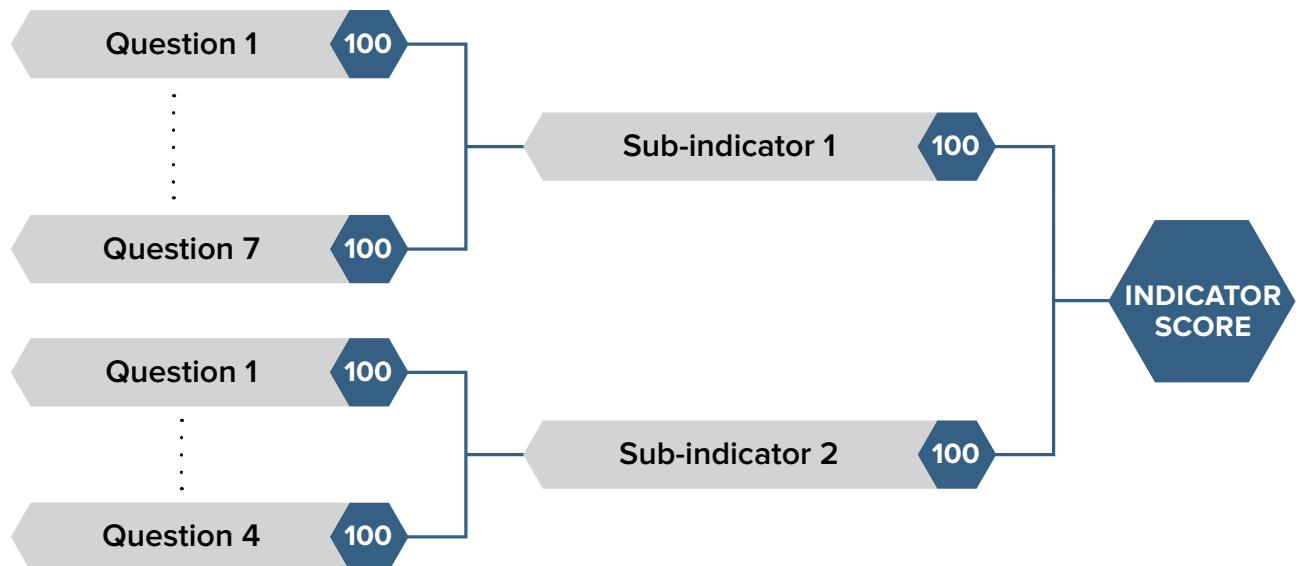
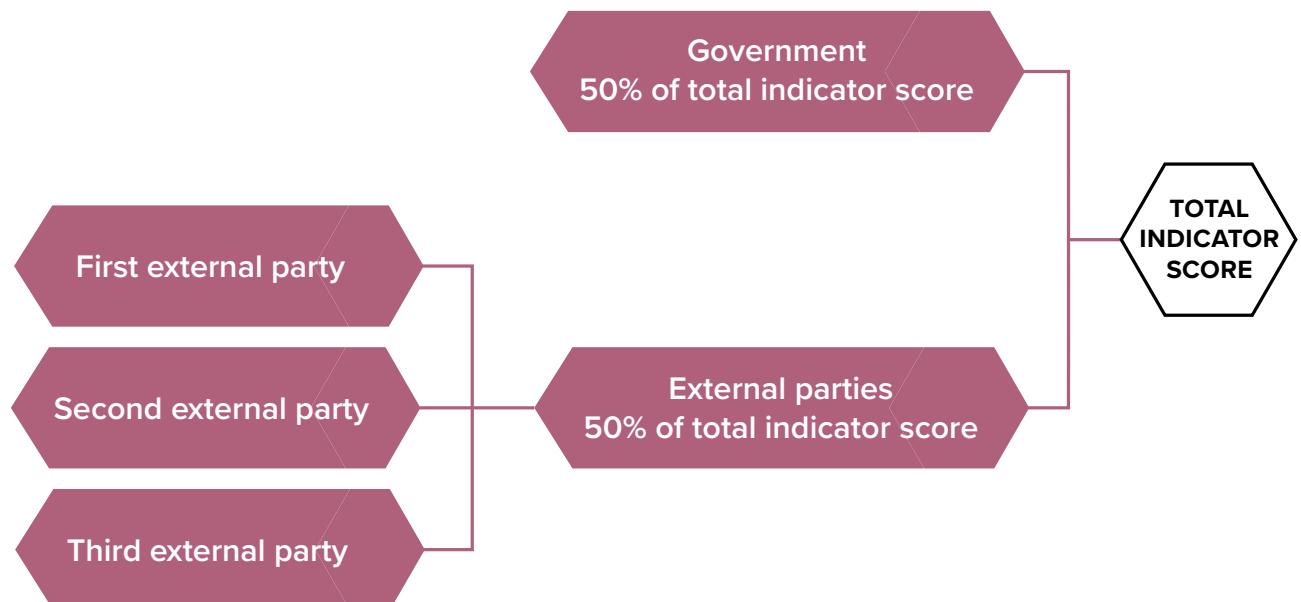


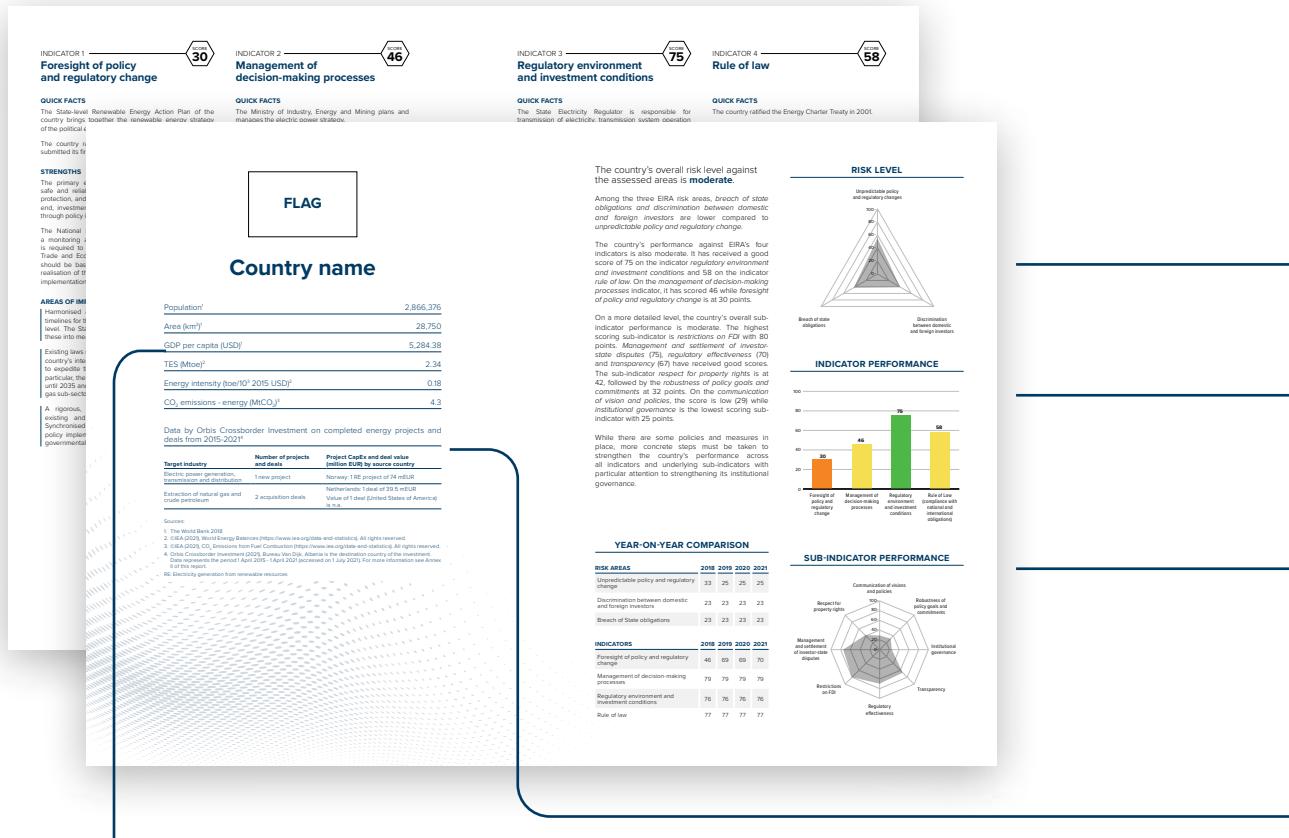
Figure I.8 – Total score of an indicator



## Country profile outline

The qualitative assessment for each country is through a four-page profile. The first page gives background information on the assessed country. It features a table of key metrics on area, population, GDP per capita, total energy supply, energy intensity and CO<sub>2</sub> emissions. This year, the page also includes new information from Orbis Crossborder Investment on energy projects and deals completed between 2015-2021 in the participating countries. The second page of the profile contains three charts showing the risk level across the assessed areas, the performance of

the country on the four indicators, and the score on the sub-indicators. A five-colour-coded bar chart depicts the indicator scores. Dark green represents the highest band of scores, while the colour red represents the lowest. In the radial chart, representing the sub-indicator scores, 0 denotes the weakest performance and 100 the strongest. Profiles of the recurrent countries have a table that reflects changes to their performance, vis-à-vis the past years. The final two pages of the profile describe the country's strengths on the EIRA indicators and the main areas for improvement.



## KEY METRICS

**Population and surface area:** Data refers to year 2018. *The World Bank 2018, World Development Indicators, World Bank national accounts data and OECD National Accounts data files*, <https://data.worldbank.org/> (accessed on 19 June 2021)\*.

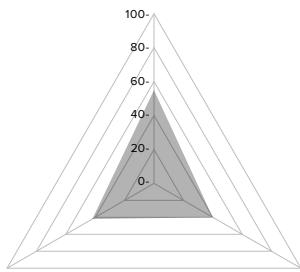
**GDP per capita (current USD):** Data refers to year 2018. *The World Bank 2018, World Development Indicators, World Bank national accounts data and OECD National Accounts data files*, <https://data.worldbank.org/> (accessed on 19 June 2021)\*.

**Total energy supply (TES):** TES is made up of production + imports - exports - international marine bunkers - international aviation bunkers ± stock changes. Note, exports, bunkers and stock changes incorporate the algebraic sign directly in the number. Data refers to the year 2018. *IEA (2021), World Energy Balances* (<https://www.iea.org/data-and-statistics>). All rights reserved.\*

**Energy intensity:** This is a measure of total primary energy use per unit of gross domestic product. Data refers to year 2018. *World Energy Balances* (<https://www.iea.org/data-and-statistics>). All rights reserved.\*

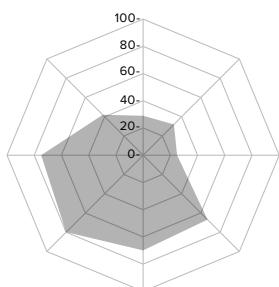
**CO<sub>2</sub> emissions from fuel combustion:** Data refers to year 2018. *IEA (2021), CO<sub>2</sub> Emissions from Fuel Combustion* (<https://www.iea.org/data-and-statistics>). All rights reserved.\*

\*N/A means data is not available for this metric



### RISK LEVEL

The risk level is displayed by the grey triangle. Each axis represents a risk area. The smaller the size of the grey triangle, the lower the level of risk.



### SUB-INDICATOR PERFORMANCE

Each axis represents a sub-indicator. The larger the size of the grey area, the better the country's performance.

### DATA FROM ORBIS CROSSBORDER INVESTMENT

Energy projects and deals completed between 2015-2021.

### INDICATOR AND SUB-INDICATOR CORRELATION

#### Indicator 1

1. Communication of vision and policies
2. Robustness of policy goals and commitments

#### Indicator 2

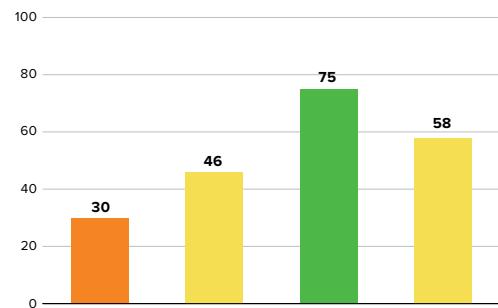
1. Institutional governance
2. Transparency

#### Indicator 3

1. Regulatory effectiveness
2. Restrictions on FDI

#### Indicator 4

1. Management and settlement of investor-State disputes
2. Respect for property rights



### INDICATOR PERFORMANCE

The indicators affect the risk areas differently. For example, *rule of law* has the highest impact since it influences all three risk areas. For details on the correlation between the indicators and the risk areas, see Table I.1.

The bars are colour-coded. Each colour corresponds to a performance level.



#### VERY GOOD

The performance against the assessed indicators is very good and the risk level is very low. The country provides attractive conditions for investors and is working in the right direction.

#### GOOD

The performance against the assessed indicators is good and the risk level is low. While the country has relevant policies and measures in place, there is some potential for improvement.

#### MODERATE

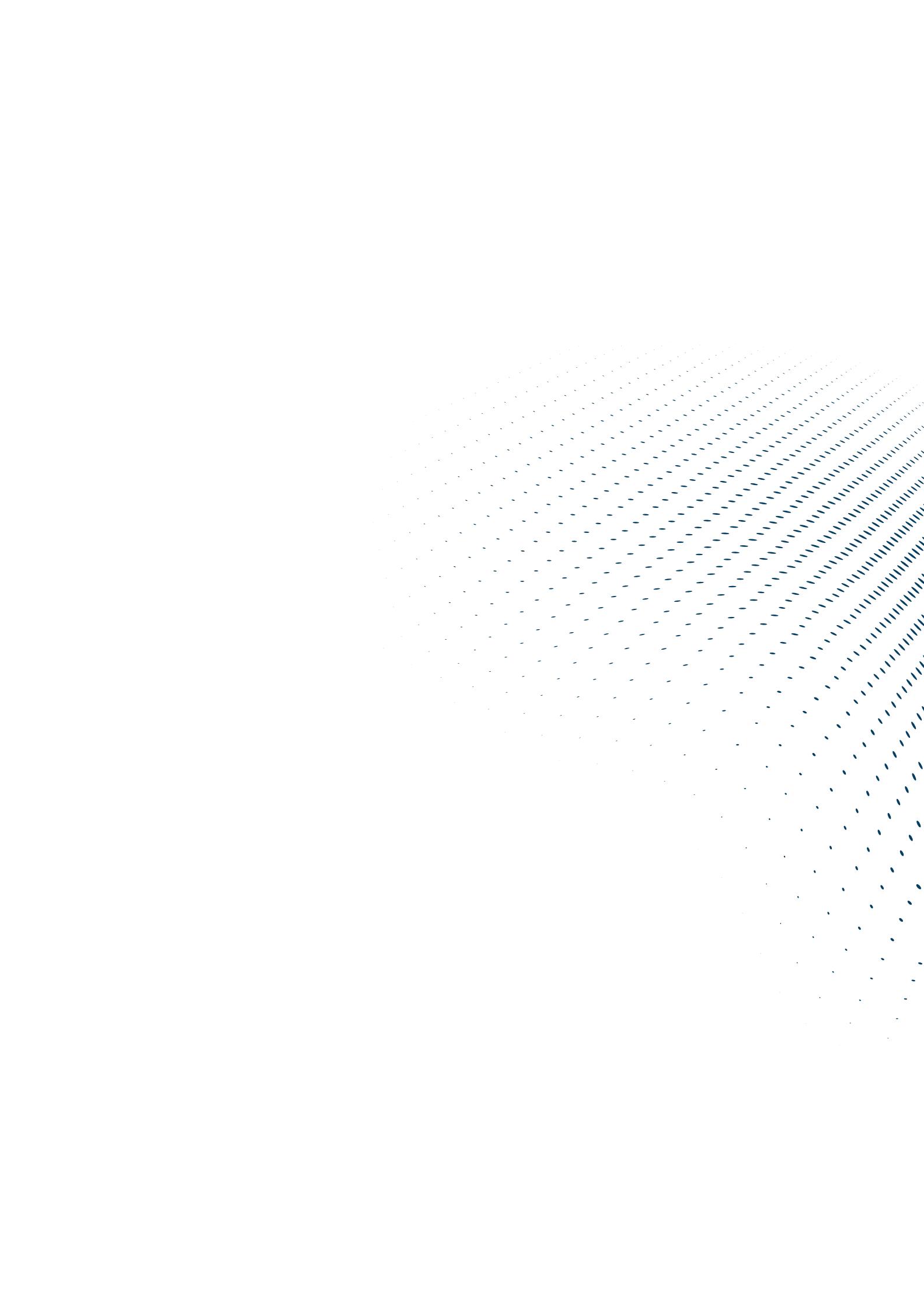
The performance against the assessed indicators is moderate and the risk level is moderate. There are some policies and measures in place but more concrete steps must be taken to further strengthen the performance.

#### LOW

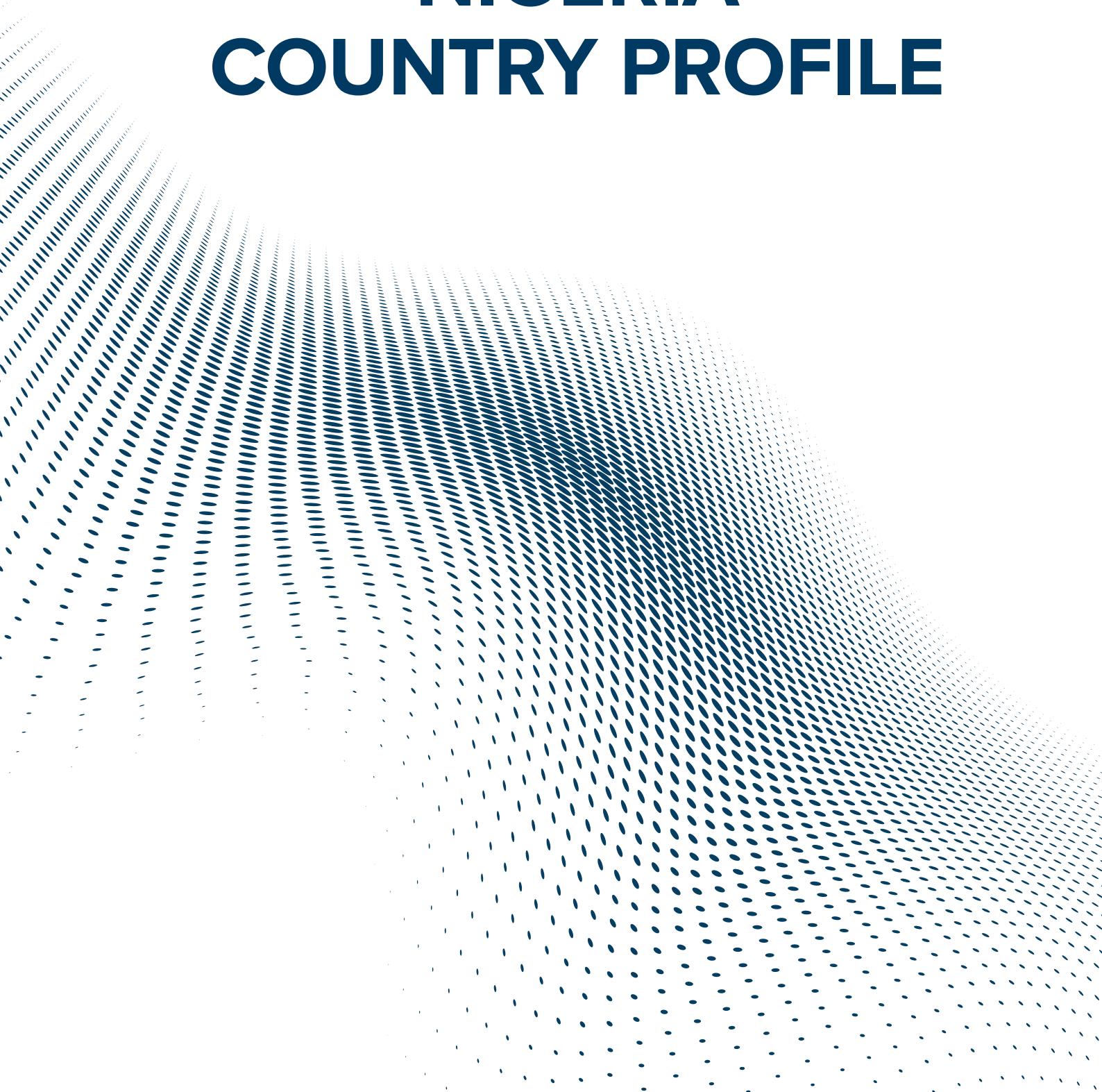
The performance against the assessed indicators is low and the risk level is high. Considerable steps need to be taken to improve the performance.

#### VERY LOW

The performance against the assessed indicators is very low and the risk level is very high. Significant and immediate steps need to be taken to improve the performance.



# **NIGERIA COUNTRY PROFILE**





# Nigeria

|  |             |
|--|-------------|
| Population <sup>1</sup>  | 195,874,740 |
| Area (km <sup>2</sup> ) <sup>1</sup>                                 | 923,770     |
| GDP per capita (USD) <sup>1</sup>                                    | 2,027.77    |
| TES (Mtoe) <sup>2</sup>  | 159.88      |
| Energy intensity (toe/10 <sup>3</sup> 2015 USD) <sup>2</sup>         | 0.32        |
| CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>3</sup> | 104.3       |

Data by Orbis Crossborder Investment on completed energy projects and deals from 2015-2021<sup>4</sup>

| Target industry   | Number of projects and deals            | Project CapEx and deal value (million EUR) by source country   |
|---|---|--|
| Electric power generation, transmission and distribution    | 1 new project<br>1 joint venture deal   | United Arab Emirates:<br>1 RE project of 90.9 mEUR<br>Value of 1 RE deal (Germany) is N/A  |
| Extraction of natural gas and crude petroleum               | 2 new projects<br>1 minority stake deal | United States of America:<br>1 project of 1,000 mEUR<br>United Kingdom: 1 deal of 127 mEUR<br>The Netherlands: 1 project of 4 mEUR |
| Manufacture of refined petroleum products                   | 2 acquisition deals                     | Singapore: 1 deal of 3.8 mEUR<br>Value of 1 deal (United Arab Emirates) is N/A   |
| Transport by pipeline                                       | 1 minority stake deal                   | South Africa: 1 deal of 49 mEUR  |
| Support activities for petroleum and natural gas extraction | 1 joint venture deal                    | Value of 1 deal (United Arab Emirates) is N/A  |

Sources:

1. The World Bank 2018
  2. ©IEA (2021), World Energy Balances (<https://www.iea.org/data-and-statistics>). All rights reserved.
  3. ©IEA (2021), CO<sub>2</sub> Emissions from Fuel Combustion (<https://www.iea.org/data-and-statistics>). All rights reserved.
  4. Orbis Crossborder Investment (2021), Bureau Van Dijk. Nigeria is the destination country of the investment.  
Data represents the period 1 April 2015 - 1 April 2021 (accessed on 1 July 2021). For more information see Annex II of this report.
- RE: Electricity generation from renewable resources

## Nigeria's overall risk level against the assessed areas is **moderate**.

Of the three risks assessed in EIRA, *discrimination between domestic and foreign investors* and *breach of State obligations* are lower compared to *unpredictable policy and regulatory change*.

Nigeria's performance is good on one indicator, and it is moderate on three indicators. Its score on *management of decision-making processes* has improved by two points, from 59 to 61. On the *rule of law* indicator, it has received a score of 58. Compared to EIRA 2020, its score on *regulatory environment and investment conditions* has increased by a point, from 53 to 54. At the same time, its score on *foresight of policy and regulatory change* has decreased by three points and stands at 53.

On a more detailed level, Nigeria's overall sub-indicator performance is moderate. The highest-scoring sub-indicator is *management and settlement of investor-State disputes* at 75. Following this is the *transparency* sub-indicator, where its score has gone up from 63 to 65. Its score on *communication of vision and policies* has gone down by five points and now stands at 61. On *regulatory effectiveness* (57), *institutional governance* (56), *restrictions on FDI* (50) and *robustness of policy goals and commitments* (46) it has maintained the scores from EIRA 2020. Its lowest-scoring sub-indicator is *respect for property rights* with a score of 42.

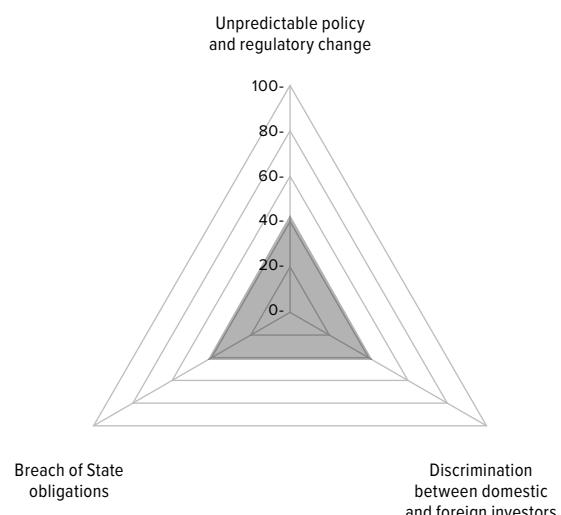
While there are some improvements in Nigeria's performance compared to EIRA 2020, further steps must be taken to build on the work done. Particular attention should be given to strengthening the respect for property rights in the country.

## YEAR-ON-YEAR COMPARISON

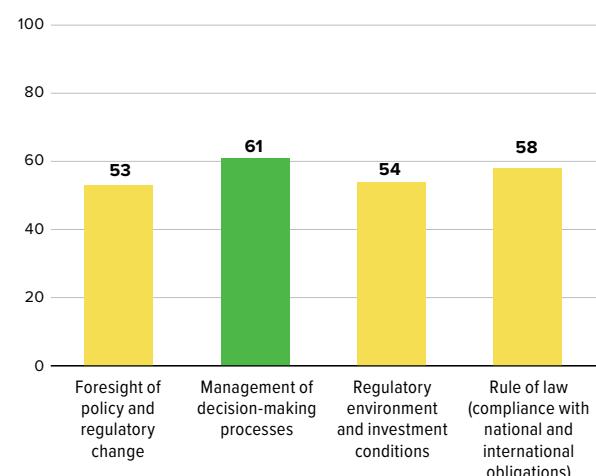
| RISK AREAS  | 2018 | 2019 | 2020 | 2021 |
|---|------|------|------|------|
| Unpredictable policy and regulatory change            | 43   | 43   | 42   | 43   |
| Discrimination between domestic and foreign investors | 44   | 44   | 43   | 42   |
| Breach of State obligations                           | 43   | 43   | 42   | 42   |

| INDICATORS                                       | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|
| Foresight of policy and regulatory change        | 54   | 55   | 56   | 53   |
| Management of decision-making processes          | 59   | 59   | 59   | 61   |
| Regulatory environment and investment conditions | 51   | 52   | 53   | 54   |
| Rule of law                                      | 58   | 58   | 58   | 58   |

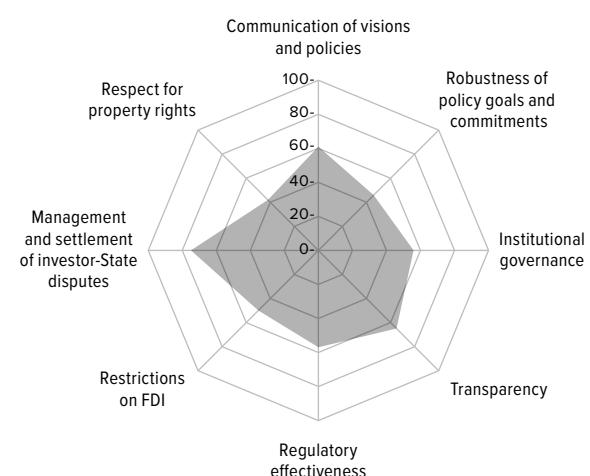
## RISK LEVEL



## INDICATOR PERFORMANCE



## SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

The Federal Government of Nigeria (FGN) is currently developing a new mid-term and long-term national development policy considering the country's current opportunities and challenges. It has already introduced updated policy objectives and targets to address climate change mitigation and adaptation. In terms of policy implementation, the FGN was most successful in mobilising investment for off-grid renewable power generation and furthering the gas sector's development.

Despite the progress made, concerns persist regarding the predictability and stability of the country's policy framework. With the expiry of critical national-level strategies in December 2020, the existing policy lacuna must be urgently filled. Action has been slow on some significant energy priorities, such as increasing the share of on-grid renewable electricity and eliminating gas flaring activities.

### QUICK FACTS

The main strategic document on the Nigerian energy sector is the National Energy Policy 2003. In 2020, the Federal Executive Council approved the Nigeria Economic Sustainability Plan (NESI) in response to challenges posed by the COVID-19 pandemic.

The FGN submitted its final updated NDC to the UNFCCC in July 2021.

The Nigerian Bulk Electricity Trading (NBET) Plc manages and administers the electricity pool in NESI. It buys electricity from GenCos through PPAs and sells it to DisCos via a vesting contract arrangement.

### STRENGTHS

To implement the EIRA recommendations, the FGN has started revising some outdated policy documents. It is currently developing the long-term perspective plan, Nigeria Agenda 2050, and the Medium-Term National Development Plan (MTNDP) 2021-2025 to replace the Nigeria Vision 20:2020 and the Economic Recovery and Growth Plan (ERGP) that expired in December 2020. In March 2021, it released an overview of the draft MTNDP that highlights the expected reforms once the final version is approved, including in the oil and gas and electricity sectors.

The FGN has significantly updated its climate change mitigation and adaptation policy to align it with the Paris Climate Agreement. In June 2020, the Ministry of Environment adopted the National Adaptation Plan (NAP) Framework to clarify the country's NAP process and harmonise all the related policy documents with the process. In 2021, it published the new National Climate Change Policy to replace the Nigeria Climate Change Policy Response and Strategy 2012. The FGN also updated its NDC in 2021 to set more ambitious targets than its 2015 version. Although the updated NDC still has an unconditional contribution of 20% below business-as-usual by 2030, it sets a 47% target conditional to international support instead of the 45% target in the 2015 NDC. The updated NDC includes, for the first time, commitments to reduce emissions in the waste sector. It also contains quantifiable targets for reducing energy sector emissions that contributed to 60% GHG emissions in 2018. The updated NDC reiterates the ambition of Nigeria's Vision 30:30:30 to generate at least 30% of on-grid electricity from renewable energy sources. It also

reflects the FGN's aim to reduce by 2030 electricity and transmission losses to 8% of final consumption (down from 15% in 2018), replace all diesel and single-cycle steam turbines with combined cycles, and phase out diesel and gasoline electricity generators. Since most of Nigeria's climate change policies and plans are more than a decade old, these welcome changes will help address the country's new challenges and needs.

Renewable power generation continued to receive an impetus, although primarily through off-grid solutions. By the end of 2020, more than 6,805 standalone solar home systems were installed in six states with financing from the Rural Electrification Fund. The NESI proposes a Solar Home Systems Project to ensure access to 5 million households currently not connected to the national grid. It also intends to transition 30 million homes from kerosene, charcoal and diesel, to liquefied petroleum gas. Given the scale of materials required, solar equipment manufacturers must set up production facilities in Nigeria. It is expected that this approach will help to create more than 250,000 jobs for Nigerians in the energy sector by 2023. MDAs have started implementing projects under the NESI. For instance, in April 2021, 100,000 solar home systems were deployed under the NESI's "Solar Power Naija".

The FGN remains committed to the gas sector's development. Nigeria LNG Ltd (NLNG) awarded an engineering, procurement and construction contract to a Saipem-led consortium for the seventh LNG Train, which will boost NLNG's current plant capacity by 35%. The FGN recently also launched the National Gas Expansion Programme and the National Autogas Roll-out Initiative

following the deregulation of downstream activities. In addition to this, it has adopted the National Gas Transportation Network Code 2020 that paves the way for expanding gas-to-power, gas-to-industry and gas-to-manufacturing, and addressing gas flaring challenges. The Code sets out a contractual framework between the gas transportation network operator and gas shippers. It stipulates the terms and conditions for operating and using the gas network and ensuring open access to gas transportation infrastructure.

The FGN progressed, albeit slowly, with its target to phase out flared gas. The recently adopted Petroleum Industry Act (PIA 2021)<sup>1</sup> envisages some actions in this respect. Per the PIA 2021, upstream oil and gas operators producing natural gas must provide the newly established Nigerian Upstream Regulatory Commission (NURC) with a natural gas flare phase-out and commercialisation plan. The PIA also specifies that monies from gas flaring penalties from upstream operations should be directed towards environmental remediation and relieving affected communities from the negative impacts. However, gas flare penalties from midstream operations must be deposited in the Midstream and Downstream Gas Infrastructure Fund, created through the PIA 2021. The Fund should then be utilised for midstream and downstream gas infrastructure investment in the affected communities.

In addition to implementing policy targets in the energy sector, the FGN improved its processes and institutional framework on policy monitoring and evaluation. The

Budget Office of the Federation published the Second Quarter and Half-Year 2020 Budget Implementation Report, which provides information on the Executive Budget's performance during the period. These reports aim to enhance budget transparency, accountability and credibility as a key component of Nigeria's commitment to the Open Government Partnership. The Budget Office of the Federation made publicly available the Medium Term Expenditure Framework and Fiscal Strategy Paper 2021-2023. The Fiscal Strategy Paper reviews the 2019 Executive Budget performance and the 2020 budget implementation. The National Bureau of Statistics published the Nigerian GDP Report (Expenditure and Income Approach) for the first and second quarters of 2020.

In 2019 and 2020, MDAs made some data available on the operational and financial performance of NESI and the various energy sub-sectors. In 2019, the National Bureau of Statistics of Nigeria published a report on the energy generated, dispatched, and consumed, and load allocations. The TCN published comprehensive data for 2019 and 2020 on the country's available power generation capacity, average daily energy generated and sent out, total transmission losses and system collapses. Along with this, it also released the status of payments made by NBET to GenCos, the annual collection of DisCos, the Aggregate Technical, Commercial and Collection (ATC&C) losses, remittance shortfalls of DisCos to NBET, and the status of customer metering by DisCos.

## AREAS FOR IMPROVEMENT

The FGN needs to develop and adopt the country's long-term energy perspective in the first quarter of 2022 to ensure seamless policy planning and implementation. It also needs to align its renewable energy and energy efficiency strategy, action plans and activities with the newly adopted climate change adaptation and mitigation planning and the updated NDC.

Over the last years, the FGN has initiated several national-level programmes as well as legal and regulatory reforms to achieve its high-level energy priorities and targets. However, most of these reforms are yet to commence or are progressing at a pace slower than required.

## RECOMMENDATIONS

### Update energy sector policies and action plans in 2022

The FGN is commended for partially implementing the previous EIRA recommendations to update its national energy objectives and set quantifiable targets and implementation measures. **The FGN is encouraged to continue developing the long-term perspective plan, Nigeria Agenda 2050, and the MTNDP 2021-2025. It is advised to finalise and adopt these policies in the first quarter of 2022** to ensure seamless

implementation. Moreover, the FGN should **update (1) the National Renewable Energy Master Plan (2006), (2) the National Renewable Energy and Energy Efficiency Policy (2015), (3) the National Energy Efficiency Action Plan (2016), and (iv) the National Renewable Energy Action Plan (2016)** to align with the Nigeria Agenda 2050, the NESP, and the new NAP Framework. **The updated policies and plans should recommend concrete actions to implement the targets in Nigeria's updated NDC.**

<sup>1</sup> EIRA 2021 assessed Nigeria's laws and regulations in force from April 2020 to April 2021. Since the PIA became effective in August 2021, it has not been considered in EIRA 2021 for the purpose of evaluating scores. Due to its high significance, the PIA has been touched upon in Nigeria's EIRA 2021 qualitative assessment (country profile) but its full analysis will be available only in EIRA 2022.

## **Implement legal reforms to achieve high-level energy policy targets**

The FGN has set progressive CO<sub>2</sub> reduction targets in its NDC, but currently, there is no legal framework to underpin its ambitions. **The FGN is encouraged to adopt a climate change mitigation and adaptation law on the country's climate change governance. Such a law could harmonise and consolidate sectoral regulations on climate change and make it legally binding for the FGN to implement the unconditional targets set out in its new NDC.**

Another issue that requires legislative action is gas flaring. The FGN missed the national target of eliminating flared gas by 2020. It has pushed the achievement date to 2030 as per its new NDC. Given the substantial share of flared gas, the FGN runs a high risk of missing the new deadline unless reforms pick up pace. According to the gas flare tracker of the Federal Republic of Nigeria, between April 2020 to April 2021, 211.2 million mscf gas was flared across 10 states. The flared gas was valued at USD 739.3 million, could potentially produce 21,100 GWh power, and accounted for 11.2 million tonnes of CO<sub>2</sub> emissions.

The Gas Flaring Prohibition and Punishment Bill and the Associated Gas Re-Injection (Amendment) Bill have been pending in the National Assembly for almost two years. **It is recommended that the Executive and National Assembly work together to swiftly adopt the Gas Flaring Prohibition and Punishment Bill and Associated Gas Re-Injection (Amendment) Bill.** Their adoption will mitigate the adverse impact of this activity on the environment and ensure the health and safety of citizens. Moreover, the FGN should start implementing the provisions of PIA 2021 on gas flaring as soon as possible. In particular, **the NURC should ensure it receives the gas flaring mitigation plans from upstream operators within 12 months from the effective date of the PIA 2021.** It should also **publish these plans to inform citizens and affected communities of the mitigation measures by companies engaged in this activity.** Finally, the FGN should **operationalise the Midstream and Downstream Gas Infrastructure Fund latest by mid-2022 and publish all the financial data relating to the penalties for flaring gas, plans to utilise the collected amount, the actual amounts utilised, and the outcomes achieved.**

## **Implement regulatory reforms to meet the national targets set for on-grid renewable electricity**

Although off-grid solutions are growing increasingly popular in Nigeria, the REA's endeavours to increase on-grid renewable capacity have yielded low results. The FGN's initial target was to have an on-grid renewable generation capacity of 27% by 2020, but this could not be achieved. Despite this setback, it has increased the NDC targets for 2030 compared to what was foreseen in Vision 30:30:30. According to the new NDC, the share of solar photovoltaic in on-grid power generation should be 6.5 GW by 2030 instead of 5 GW in Vision 30:30:30. Similarly, the targetted share of wind power has increased from 0.8 GW to 3.2 GW.

While this increased ambition is commendable, more intensive efforts will be needed to meet the new targets. It is recommended that as a starting point, **the several renewable power generation projects ready for commissioning should be implemented as soon as possible.** The list includes Nigeria's first-ever wind farm in Katsina (10 MW), the Zungeru hydropower plant (700 MW), the Kashimilla dam and hydropower project (40 MW), the Gurara hydropower plant (30 MW), and the Dadinkowa hydropower plant (40 MW). **Work should be expedited on the construction of associated transmission and distribution lines, allowing for power evacuation.**

Another issue to be addressed is that since 2016, 14 solar IPPs in the pipeline have failed to achieve a financial close. The primary reason for this is the inability of the FGN to provide adequate credit enhancement instruments to investors. Only two IPPs agreed to sign Put and Call Option Agreements (PCOAs) at reduced tariff rates, while 12 PCOAs are still pending. At the core of the issue is the need to improve NESI's financial health through effective power sector reforms. Due to NESI's sub-par performance, the FGN has continued to hold back the PCOAs, thereby limiting investment in on-grid renewable power generation.

Currently, NBET is the only bankable electricity buyer in the wholesale market, but it is not financially sound enough to back PCOAs at competitive tariff rates. Since NBET's licence for bulk electricity purchase is due to expire in November 2021, **the FGN should conduct thorough feasibility studies, cost-benefit analysis and stakeholder consultation before renewing it. Serious consideration should be given to introducing competition in the wholesale electricity market** that will allow large, financially bankable consumers to buy electricity directly from GenCos and remove the need for government-backed guarantees.

## Management of decision-making processes

MDAs made substantial efforts to ensure inclusivity and coordination in implementing policy decisions and related programmes. The National Assembly and the FGN are lauded for successfully enacting PIA 2021 – a piece of legislation pending approval for two decades. Access to information held by MDAs improved compared to the past years. Energy and investment-related MDAs, including the NNPC, NERC and the DPR, reported on their annual activities and financial performance for 2020 and 2021.

At the same time, the institutional governance of Nigeria continues to be top-heavy. MDAs sometimes duplicate actions or take contrasting approaches to address the same issue. This reduces public accountability and leads to poor policy choices. Since the FGN is currently developing its mid- and long-term national strategies, it should utilise this opportunity to make its institutional governance leaner, eliminate duplication in political decision-making, and harmonise policy implementation processes across MDAs.

### QUICK FACTS

The ECN is charged with planning and coordinating national energy policies. The President of the Federal Republic of Nigeria is the Chairman of the ECN.

The FGN established the Economic Sustainability Committee (ESC) on 30 March 2020 to draft the NESP.

Nigeria enacted the Freedom of Information Act in 2011 to make public records and information available.

The NIPC is responsible for encouraging, promoting and coordinating investment in the Nigerian economy.

The One Stop Investment Centre of Nigeria, under the NIPC, is an investment facilitation mechanism that brings to one location more than 31 government agencies.

### STRENGTHS

In 2020, the FGN inaugurated a National Steering Committee (NSC) to develop the Nigeria Agenda 2050 and the MTNDP 2021-2025. The NSC will supervise this task through a governance structure comprising a central working group and 26 technical working groups. Moreover, the ECN continued to bring together different MDAs and non-government agencies in developing policy decisions on the energy sector. In 2021, it organised the second National Energy Summit to discuss investment opportunities in Nigeria's electricity and oil and gas sectors and define investors' expectations of the FGN in making the business climate conducive. The Summit also emphasised the issues of energy self-sufficiency and sustainable economic growth in Nigeria.

To improve the investment climate, MDAs are working together to reform the BITs signed by Nigeria. The MDAs engaged in the process are the Federal Ministry of Industry, Trade and Investment, the NIPC, the Federal Ministry of Justice, the Ministry of Foreign Affairs, the Federal Ministry of Finance, the Ministry of Budget and National Planning, the Central Bank of Nigeria, the Federal Inland Revenue Service and practising arbitrators.

MDAs made information on their activities publicly available in 2020 and 2021. The NIPC uploaded its Freedom of Information Annual Report for 2020. It also published a summary of all the queries it received in 2020 under the Freedom of Information Act and

the responses it provided. In February 2021, the DPR launched the Downstream Remote Monitoring System (DRMS) to track petroleum product levels across retail outlets and depots. The DRMS aims to digitalise the Nigerian oil and gas industry by providing real-time data for investment purposes and business decisions.

In July 2021, NEITI published the Financial, Physical and Process Audit: An independent report assessing and reconciling physical and financial flows within Nigeria's oil and gas industry – 2019. The report was prepared to comply with the NEITI Act 2007 and the EITI Standard 2019. It gives detailed information on the exploration, production and export, revenue collection and distribution, and social expenditures undertaken in the extractives sector of Nigeria. In June 2021, NEITI published its performance report for 2020. As of December 2020, the FGN has completed 755 projects mentioned in its 2020 EITI Work Plan. While 23% of the projects are ongoing, only 4% are yet to start. In September 2021, the NEITI entered a partnership with the Independent Corrupt Practices and Other Related Offences Commission and signed a Memorandum of Understanding (MoU) to reflect the same. The MOU aims to provide incentives for good conduct and stringent sanctions for bad behaviour in the conduct of business in Nigeria's oil and gas and mining industry. The intervention is also targeted at freeing up resources in the extractive sector to support the government

efforts at providing the much-needed infrastructure for Nigerians, uplift their standard of living and support national development.

In June 2020, for the first time, the NNPC Group released independently audited financial statements of its 20 subsidiaries and corporate units for the Financial Year 2018. Following this, in October 2020, it released the audited financial statements of 22 units for the Financial Year 2019, including the consolidated NNPC Group statement. Along with ensuring financial transparency and accountability, the NNPC has published detailed monthly reports for the first half of 2020, with information on its operational performance, the volumes and values of oil and gas delivered, fiscal payments made, in-kind oil payments made, and deductions offered by it. It is also worth noting that in June 2020, for the first time, the Debt Management Office of Nigeria (DMO) published detailed information on loans to the FGN that have been signed but not yet disbursed, disaggregating it by creditor and project. The DMO also committed to continue publishing this data semi-annually.

In 2020 and 2021, NERC's performance on transparency and public accountability was noteworthy. In 2020, it submitted quarterly reports on its activities to the President of the FGN and the National Assembly. The reports examine the opportunities and challenges in NESI and give detailed information on NERC's operational and commercial performance, regulatory functions, consumer affairs, and its financial and human resources. In 2020 and 2021, NERC conducted extensive public hearings on important topics, including revisions to the Multi-Year Tariff Order (MYTO). It also released for public comments a Consultation Paper setting

out the electricity rates proposed by the distribution licensees. One of its key achievements was that after multiple consultations with citizens, GenCos, Discos and other electricity sector stakeholders, it introduced a democratised service-based electricity tariff structure in 2020. Under the new tariff regime, DisCos will only review tariff rates after consultations with the affected customers. In addition to this, NERC also resolved conflicts between DisCos and some community members on unreliable electricity supply, non-payment of bills and vandalism.

In 2020 and 2021, various subsidiary legislation was adopted to increase transparency in the oil and gas sector. The FGN published the Guidelines on Importation of Petroleum Products into Nigeria, effective from August 2020, setting out operational guidelines to obtain permits for importing petroleum products into Nigeria. The guidelines are intended to curb the import of adulterated petroleum products into the country. The DPR also released guidelines and procedures for obtaining a coastal vessel clearance licence in October 2020 and another set of guidelines on procuring the DPR's approval to transfer interests and assets in the downstream sector. These regulatory guidelines aim to increase transparency by allowing applicants to understand the criteria and requirements assessed by the DPR while processing applications. The FGN also published the Guide for the Establishment & Operations of Lube Oil Blending/Waste Oil Recycling Plants in Nigeria 2020 that regulates waste oil recycling plants in Nigeria. The guidelines' purpose is to reduce environmental damage and pollution from such plants and ensure they transparently run operations.

## AREAS FOR IMPROVEMENT

The FGN must take an evidence-based and inclusive approach in setting its future energy actions. This is particularly relevant for enabling the clean energy transition, which will require coordinated efforts of MDAs, civil society organisations and citizens to be successful.

Currently, multiple ministries lead the implementation of different energy priorities. Due to this, it becomes challenging to identify the reporting lines and to set accountability for the non-fulfilment of activities and strategies. It can also result in duplication of work, contradictory approaches by agencies for the same task, and in more extreme cases, blame-shifting tactics by the MDAs involved.

Nigeria has made commitments under various international transparency initiatives, but more work is needed to meet its obligations.

## RECOMMENDATIONS

### **Coordination on energy policies and their implementation should be more robust**

With the global shift away from fossil fuels underway and the slump in oil prices due to the COVID-19 pandemic, the oil and gas sector is losing appeal for investors in the short and long term. Since the Nigerian economy continues to rely heavily on oil revenues, the **FGN should commission a multi-stakeholder body comprising MDAs, academia, civil society organisations, and energy companies to prepare a cross-sectoral energy transition strategy.** The main elements of this energy transition strategy should be integrated into the upcoming Nigeria Agenda 2050 and the MTNDP 2021-2025.

**To make their operations sustainable, all MDAs must prepare individual energy transition plans with short- and long-term measures. In particular, the NNPC and its subsidiaries must develop concrete steps to reduce the carbon intensity of their products and operations.** For this purpose, the NNPC should hire external expertise if needed. All the plans and documents prepared by MDAs should be made publicly available. The MDAs must submit annual follow-up reports to the FGN and the National Assembly and make these publicly available.

**Measures should be taken to increase the accountability of MDAs**

While policy coordination and consultation mechanisms can vary from one country to another, it is recommended that a single point of responsibility be accountable for leading the work in a priority area. The ERGP designated four lead authorities to improve the commercial viability of GenCos and DisCos and six to increase oil production. Similarly, seven lead bodies were responsible for creating a business-friendly environment. Now that the ERGP has expired and the FGN is setting new mid-term and long-term national energy strategies, it has an opportunity to learn from the ERGP's inconsistencies and streamline the institutional governance of its policy-making and implementation process for the future.

**Develop instruments for stakeholder consultation at different stages of the policy process**

Instead of ad hoc consultations, the methods and timelines of public participation should be decided early on and made publicly known. This approach will increase investor confidence, promote cooperation and encourage dialogue on policy choices. Such an approach will also increase the FGN's accountability and empower the public to make informed decisions.

INDICATOR 3

SCORE  
**54**

## Regulatory environment and investment conditions

In 2020 and 2021, the FGN strengthened its legal and regulatory framework in the oil and gas sector and implemented much-needed reforms in the power sector. The most notable developments were the enactment of the PIA and the introduction of service-based electricity tariffs. Efforts were also made to improve the country's business climate through an updated taxation and company law regime.

Though the FGN is taking steps in the right direction, there is substantial scope to improve NESI's financial and operational performance. Enforcement of existing regulations that can ensure payment discipline by electricity customers, DisCos and NBET is urgently required. While the new tariff regime is a step forward it is not the end of the road. NERC will need to identify and set the right policy and financial measures that will help achieve fully cost-reflective electricity tariffs.

### QUICK FACTS

NERC regulates the generation, transmission, distribution and trading of electricity. It monitors and regulates NESI and ensures compliance with market rules and operating guidelines.

Under the Federal Ministry of Petroleum Resources, the DPR is the petroleum regulatory agency of Nigeria.

The NNPC is a State-owned enterprise regulating the Nigerian petroleum industry and participates in it through joint ventures with private companies.

### STRENGTHS

In 2020 and 2021, the FGN made substantial progress with its energy sector reforms on two fronts. Its first achievement was the enactment of PIA 2021 which formally divides the petroleum industry into two segments: upstream and downstream. It establishes the NURC to regulate upstream petroleum activities, including environmental management, and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) for technical and commercial regulation of midstream and downstream petroleum operations. The NURC and the NMDPRA report to the Federal Minister of Petroleum Resources.

Deregulation of downstream oil and gas activities was also a priority that the FGN addressed through the PIA and other similar measures. As a starting point, in early 2021, it decided to eliminate fuel subsidies and fully

deregulate the downstream oil sector. Following this decision, the Petroleum Products Pricing Regulatory Agency (PPPRA) – which previously set a monthly price band for gasoline – was limited to a supervisory role. This move has been further strengthened by PIA 2021, which requires that the NMDPRA set a cost-reflective pricing framework for the transportation, distribution and processing of petroleum.

The second achievement of the FGN was furthering the power sector reform. After delays due to the COVID-19 pandemic, in September 2020, NERC launched the service-based tariff regime as a step towards full cost-reflectivity. The service reflective tariffs have increased liquidity particularly in the distribution value chain of NESI, and would aid investment in critical distribution infrastructure. Under the new tariff regime, DisCos can

only review electricity tariffs of metered customers after consulting them and assuring them of a guaranteed level of electricity service based on hours of supply. Unmetered customers and those on lifeline tariffs will remain unaffected by the change. In line with the change in tariff regime, in November 2020, NERC raised electricity tariffs by 56% to 80% while ensuring the revisions do not adversely impact vulnerable and low-income households.

In October 2020, the FGN approved the National Mass Metering Programme (NMMP) to bridge the country's metering gap and minimise the impact of the service-based tariffs on electricity consumers. The Central Bank of Nigeria issued the framework for financing the NMMP, defining the operational guidelines for granting financial support to DisCos and local meter manufacturers. According to the FGN, in the first phase of the NMMP – lasting eight months – 750,000 meters were distributed against a target of 1 million. At the same time, in March 2021, NERC issued Order No. NERC/246/2021 mandating DisCos to replace all faulty and obsolete meters under the NMMP in strict compliance with the Metering Code and other regulatory instruments.

On 9th April 2021, the NERC released a new MYTO 2021 for mini-grids. It is yet to be seen whether these tariffs will sufficiently compensate or deal with the economics of such projects. However, investors can take comfort that the NERC approved tariffs are subject to review if evidence exists that the actual costs incurred or the actual revenue earned by the mini-grid developer varies

from the cost and revenues stated during the tariff definition with the NERC.

PIA 2021 and the ongoing power sector reform signal the commitment of the FGN to create a robust, resilient and attractive business climate for foreign investors. In fact, in 2020 and 2021, several legislative reforms were introduced in anticipation of and complementary to the PIA. The Companies and Allied Matters Act (CAMA), enacted on 7 August 2020, was one such important legal reform. CAMA 2020 has over 15 new provisions to promote the ease of doing business and reduce regulatory barriers. For the first time, it introduces the Limited Liability Partnership (LLP) and Limited Partnership (LP) business structures so that investors can benefit from a limited liability structure with the tax status and flexibility of a partnership. CAMA 2020 is supported by the Companies Regulations 2021, which lay down the procedures involved in registering a private limited company from January 2021 onwards.

On 3 February 2020, the FGN issued the Value Added Tax (Modification Order) 2020, expanding the VAT-exempt goods and services list. The Order exempts 15 items listed as petroleum products from VAT, including kerosene, natural gas, other liquefied petroleum gases and gaseous hydrocarbons. Eight types of renewable energy equipment are also included in the list of exempt items, such as generators of different capacities, either solar-powered, wind-powered or solar DC generators and photosensitive semiconductor devices.

## AREAS FOR IMPROVEMENT

The existence of multiple regulatory authorities may create ambiguity regarding the energy sector's institutional design and its effectiveness.

The FGN needs to undertake urgent measures to improve NESI's financial health. The entire electricity value chain is currently suffering due to the consistently low revenue collection of NBET, DisCos and GenCos and their mounting debts. The brunt of ineffective regulatory choices continues to be borne by customers in the form of an increasing metering gap, high estimated bills, and inadequate electricity access.

## RECOMMENDATIONS

### Define the roles and responsibilities of the different regulatory authorities

The enactment of PIA 2021 is a breakthrough, but its success depends on the FGN's ability to administer it effectively. While a thorough analysis of its implementation will be covered in EIRA 2022, for the moment, it can be said that PIA 2021 undisputedly clarifies the future governance and regulatory framework of the petroleum industry. However, the status and inter-relationship of the various existing regulators, namely the DPR, the PPPRA and the Petroleum Inspectorate (PI), are less clear. As a starting point, **the FGN should ensure a smooth and timely transfer of responsibilities from the DPR (the current upstream regulator) to the NURC**. A similar exercise will also be essential to **determine the mandate, powers and functions of the PPPRA and the PI vis-à-vis the NMDPRA**. For proper functioning of the industry and to give full effect to PIA 2021, where needed, **redundant regulatory agencies should be phased out, and those with limited functions brought under the umbrella of the NURC and the NMDPRA**.

### Develop legal and regulatory measures to strengthen NESI's financial and operational performance

In 2020, out of the available generation capacity of 6,119 MW, about 35,104 GWh was injected into the grid. However, 7.34% of this was not sent out due to transmission losses (2577 GWh). Discounting exports, DisCos received 29.819 GWh of energy but only billed 22.163 GWh because outdated power infrastructure and energy theft led to high distribution losses (7,656 GWh). Overall, the ATC&C losses in 2020 were a staggering 50.57% compared to the MYTO's target of 22.11%. In fact, the ATC&C losses increased significantly between 2019 (45%) and 2020.

**To reduce electricity losses, the FGN should urgently enact a law curbing electricity theft.** This proposed law must impose financial and other penalties for violations, and NERC should strictly enforce its provisions. **NERC should also review its electricity theft detection incentives and prepare a formal strategy and scheme to boost reporting by citizens.**

It should assess if the existing regulations in this respect are producing the intended results, evaluate the reporting trends and determine whether the reward amounts need to be increased.

#### **Enforce contractual and fiscal terms to improve the revenue collection of DisCos**

**NERC should conduct a fresh review of the MYTO to update and progressively increase the payment requirements of DisCos for the following year. Moreover, it should enforce penalties on DisCos that have failed to meet the minimum remittance requirements for a year or more.** In 2020, DisCos were invoiced NGN 860.31 billion by NBET, of which only NGN 337.64 billion was paid. According to the preliminary data available with NBET, between January to August 2020, only for two months did two companies pay the minimum remittance to NBET. Payments by these two DisCos and the remaining nine did not reach the minimum threshold for the rest of the months. Although NERC increased the minimum remittance percentage in September 2020, none of the 11 DisCos paid the minimum amount. It is important to note that inconsistent payments by DisCos have a cascading effect on NBET's ability to fulfil its financial obligations towards GenCos and on its growing debt. As a result, in 2020, although GenCos invoiced NGN 739.68 billion to NBET, it could only pay NGN 302 billion.

#### **Transition to fully cost-reflective electricity tariffs and ensure the successful implementation of the NMMP**

In 2020, DisCos recovered only NGN 542 billion of NGN 816 billion invoiced to customers, with the collection efficiency dropping from 67.84% in 2019 to 66.50% in 2020. In light of this, the FGN's recent decision to introduce service-reflective tariffs is undoubtedly a step in the right direction. **The FGN is encouraged to continue with reforms that will help achieve fully cost-reflective tariffs through the appropriate financial and policy measures.**

It is also recommended that **DisCos increase and expedite efforts to close the metering gap.** As per the latest estimates of NERC, in 2020, 7.4 million citizens did not have meters and received estimated bills. In fact, between 2019 and 2020, the metering gap increased from 60.20% to 62.63%. Therefore, **NERC must investigate and confirm that DisCos are complying with its Order No. NERC/197/2020 capping the monthly amount payable by some categories of unmetered electricity consumers.** Apart from this, 3 million meters are currently obsolete and due for replacement. As a result, NERC should **ensure the full implementation of its Order No. NERC/246/2021** that requires DisCos to file monthly returns with NERC on the faulty/obsolete meters replaced and their proposal for the decommissioned meters. The **duly filed returns must be publicly available** on NERC's website. **DisCos must submit documentary evidence to NERC that all new meters comply with the Metering Code of Nigeria.** NERC may also consider amending the Order to **set a time limit within which DisCos must replace all meters.**

INDICATOR 4

#### **Rule of law**

SCORE  
**58**

Few changes were observed in the procedures for settling investor-State disputes. The NIPC, along with several other MDAs, made some progress with its BIT reforms. No retroactive changes were made to laws, and the NIPC Act continued to provide robust protection to the property rights of foreign investors.

In the meanwhile, little progress was made on the Arbitration and Conciliation Act (Repeal and Enactment) Bill pending in the National Assembly for almost two years now. Moreover, concerns persist regarding how the potential changes to national and international dispute resolution mechanisms will play out in reality, whether these are compatible with the country's existing legal framework and, where needed, how the domestic judicial setup will cope with these changes.

#### **QUICK FACTS**

Nigeria signed the International Energy Charter political declaration in 2017 and became an Observer to the Energy Charter Conference.

Access to arbitration is provided in the Arbitration and Conciliation Act 2004.

Nigeria ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1965.

Nigeria acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1970.

## STRENGTHS

In 2020 and 2021, the FGN continued to modernise and promote alternative dispute resolution mechanisms. For instance, the Local Content Development and Enforcement Bill 2020, currently being debated in the National Assembly, proposes a mandatory requirement that any dispute arising from a contract governed by this bill be resolved by an arbitral panel that comprises at least three judges of the Federal High Court. NERC also encourages the energy market players to utilise its 12-member Dispute Resolution Panel, which was reappointed on 7 May 2020, to resolve conflicts. The Panel's functions include arbitrating and resolving disputes between market participants such as the system operator, the market operator, and other licensees engaged in electricity trading.

The Arbitration and Conciliation Act (Repeal and Enactment) Bill addresses local practices employed to protract arbitration proceedings and delay awards. It also tries to limit the involvement of courts in arbitration proceedings. For example, if a party is dissatisfied with an award, it may refer the matter to the courts for judicial review or approach the award review tribunal. The latter is a new body created through the bill, and it is empowered to review an award of the first instance arbitral tribunal. An award that this tribunal upholds can be set aside by a court only on two grounds – arbitrarily and/or public policy. By reducing the grounds for challenge, the bill attempts to re-enforce the finality of arbitral awards. The bill also allows the appointment of an emergency arbitrator in cases where a party may need relief even before an arbitral tribunal is established. This mechanism aims to encourage parties to approach the arbitrator rather than take recourse to courts.

The Arbitration and Conciliation Act (Repeal and Enactment) Bill aims to implicitly allow for "Third Party Funding" (TPF) in arbitration proceedings. In a TPF arrangement, an independent party with no direct or vested interest can fund the proceedings and receive a share of the damages awarded. TPF is becoming a common practice in several "pro-arbitration" jurisdictions. The Arbitration and Conciliation Act (Repeal and Enactment) Bill introduces this concept indirectly by expanding the term "Costs of Arbitration" to include the cost of TPF. It should, however, be noted that since there is no express provision in the bill legalising TPF, there are no regulations on the topic envisaged at the moment.

In 2020 and 2021, the NIPC and other collaborating MDAs progressed with the country's BIT reforms. The purpose of these reforms is to promote sustainable development objectives, balance the rights and obligations of investors, preserve the policy space and right to regulate, improve investment facilitation mechanisms and develop safeguards to limit investor-State disputes. Additionally, the reforms aim to ensure that all investment made into the country is responsible, inclusive, balanced and sustainable.

The BIT reforms are being implemented in three phases. In the first phase, the NIPC developed a new Model BIT. The new Model BIT, introduced in 2016, provides for mediation and dispute resolution mechanisms and contains safeguards against Investor-State Dispute Settlement (ISDS) provisions. The second phase of the reforms is underway and involves modernising the existing "old generation" BITs. As of 2021, the NIPC has mapped the existing old-generation BITs using 20 critical and reform-oriented parameters. Following the review, it was concluded that while three BITs conform to the new policy direction of the country, 17 BITs will need to be amended, re-negotiated or terminated. The FGN is currently re-negotiating one BIT in force and two BITs that have concluded. Moreover, the modernisation of one outdated BIT is ongoing.

After overhauling the existing BITs, the FGN will begin the third phase of the reforms to ensure the development of a coherent legal framework at all levels. At this stage, it will align the investment provisions in its domestic laws with international obligations undertaken at the bilateral (modernised BITs), regional (Investment Protocol of AfCFTA) and multilateral (ICSID Rules Amendment Process and UNCITRAL Working Group III on ISDS) levels.

The FGN did not take any legal or regulatory measures that adversely affected the property rights of investors. The NIPC Act grants robust protection to foreign investors from the nationalisation or expropriation of private property. Any person who owns, either wholly or partly, the capital of any enterprise cannot be compelled by law to surrender his interest to any other person. The law requires the payment of fair and adequate compensation in the case of any compulsory acquisition.

In 2020, *Intercean vs Nigeria* became the first ICSID arbitration against Nigeria decided on the merits. While the matter was decided in favour of the FGN, the decision confirmed the possibility that an investor can utilise ICSID or other international arbitration procedures based on the NIPC Act and customary international law. It increased the options to file investor-State claims for those foreign investors that cannot avail substantive protections under any international investment agreements. Moreover, the decision clarified that the broadly formulated language of the NIPC Act and principles of customary international law protect foreign investors against indirect expropriation. It held that nothing in the NIPC Act's text excludes indirect or creeping expropriation from its scope, and such a narrow and limited interpretation is unwarranted. It is to be seen whether this decision is persuasive enough to be used in future arbitration decisions. However, for the moment, it has given a liberal interpretation to the NIPC Act and customary international law and expanded the scope of protection granted to foreign investors.

## AREAS OF IMPROVEMENT

There is little clarity on the effectiveness of reforms underway to national and international dispute resolution mechanisms. In particular, the innovations introduced to the arbitration law need further examination to ensure they are consistent with the country's common law system.

Under domestic law, expropriation refers only to physical property. National legislation does not contain provisions for granting protection against the expropriation of intangible property such as equity, shares and intellectual property.

## RECOMMENDATIONS

**The FGN should review the dispute prevention policies and practices of other countries and adapt these in its international agreements and national laws to the extent possible**

On the national level, the FGN should establish a real-time database of foreign investors operating in the country and historical data on investor grievances and conflicts. The database could then be utilised to monitor sectors prone to disputes, identify recurrent issues that arise between investors and public agencies, and spot patterns of non-compliance by investors. The main findings could be shared with the relevant public agencies to recognise similar issues when they arise and address them at an early stage.

**The FGN could designate a lead agency, such as the ECN, to create and maintain this database for the energy sector (renewable and hydrocarbon). The ECN could act as the main point of contact for energy investors to convey their grievances and contact the public agency involved in the conflict.**

It is also recommended that the FGN take prompt measures to update the domestic judicial processes and case management mechanisms. **Serious consideration should be given to establishing an investment ombudsman or similar institution to handle the complaints of foreign investors against public authorities during the licensing procedures.** This can help to resolve issues before they precipitate into full-blown disputes. The FGN could contemplate taking the approach of Brazil's Cooperation and Facilitation Investment Agreements (CFIA) that **makes it a treaty-level obligation to appoint a national ombudsman.** A primary responsibility of such an ombudsman should be to prevent differences on investment-related issues and ensure cooperation between an aggrieved investor and government authorities involved in a conflict. The national ombudspersons can also facilitate information exchange on regulatory issues affecting general investment or specific projects. **The FGN can also seek guidance from the Energy Charter Model Instrument on Management of Investment Disputes that aims to assist States in handling investment disputes while keeping in mind their particular needs and circumstances.**

The FGN is recommended to take a cautious approach while reforming the country's arbitration law. The enforceability of TPF agreements is uncertain, given that Nigeria still applies the common law doctrines of champerty and maintenance. These doctrines prohibit third parties from funding an unrelated party's case. Given that the Bill takes account of TPF implicitly, it may not be robust enough to overcome the rules against champerty and maintenance. It also increases the

likelihood that a party may challenge the validity of its opponent's funding or an award obtained through the funding party. **TPF agreements must be given explicit legitimacy so that their scope and application is clear. There should be defined rules regulating the enforcement of such agreements and a more flexible approach taken in using historical common law concepts.** Some common law countries, including England and Wales, Canada and the United States, already allow third-party arbitration funding. The flexibility lies in that TPF is allowable if it is not contrary to public policy and unenforceable.

**The expropriation provision in the NIPC Act may be revised to avoid potential interpretational contradictions**

For now, an ICSID award in Interocean v Nigeria has broadly interpreted the NIPC Act to grant foreign investors protection from indirect expropriation. However, arbitration awards do not form precedents, and future arbitration tribunals may interpret the NIPC Act differently. **To ensure legislative certainty, the FGN must make explicit the scope of the NIPC Act, its application to cases of indirect or creeping expropriation, protection to intangible property, such as equity, shares, and IP rights, and mention any carve-outs if necessary.**

Additionally, the FGN should clarify some terminologies used in the NIPC Act, such as "public purpose". A list of core activities that constitute public interest can provide clarity to investors. A detailed mechanism for the determination of public interest will ensure the legitimacy of the decisions to expropriate. It is recommended that the **NIPC Act should include a timeline for paying compensation to the affected investor** and explaining the intended use of the acquired property. **It should be clearly mentioned that any act of expropriation will be non-discriminatory.** This will assist in protecting investors and give clarity on the legal regime.



# **ANNEX I:**

# **IMPLEMENTATION**

# **STATUS OF THE**

# **EIRA AREAS FOR**

# **IMPROVEMENT**

## Nigeria

| PROPOSED IN | EIRA AREAS FOR IMPROVEMENT   | IMPLEMENTATION STATUS AS OF 1 APRIL 2021  |
|-------------|--|---|
|             | <b>Indicator 1</b>   |   |
| <b>2018</b> | <p>Carry out a rigorous impact assessment of the existing laws and policies.</p> <p>Set key performance indicators for the energy sector.</p> <p>Regularly publish the policy monitoring and evaluation reports.</p> <p>Revise the policy targets that expired in 2020, such as for increasing oil production, expanding the power sector infrastructure, boosting local refining, and becoming a net exporter of petroleum products.</p>  | <p><b>Pending</b></p> <p><b>Pending</b></p> <p><b>Work ongoing.</b> In 2018, the FGN established an inter-ministerial Committee to harmonise data collection and evaluation of the country's objectives. The Budget Office of the Federation published the Second Quarter and Half-Year 2020 Budget Implementation Report, which provides information on the Executive Budget's performance during the period. The Budget Office of the Federation made publicly available the Medium Term Expenditure Framework and Fiscal Strategy Paper 2021-2023. The Fiscal Strategy Paper reviews the 2019 Executive Budget performance and the 2020 budget implementation. The National Bureau of Statistics published the Nigerian GDP Report (Expenditure and Income Approach) for the first and second quarters of 2020.</p> <p><b>Work ongoing.</b> The FGN established a National Steering Committee to develop the long-term perspective plan, Nigeria Agenda 2050, and the Medium-Term National Development Plan (MTNDP) 2021-2025 to replace the Nigeria Vision 20:2020 and the Economic Recovery and Growth Plan that expired in December 2020. However, working on revising the expired energy sector action plans and targets is pending.</p> |
| <b>2020</b> | <p>Implement the power sector reforms to promote investment in on-grid renewable electricity.*</p> <p>Operationalise programmes and legislative provisions to meet the national targets on phasing out flared gas.*</p> <p>Consider introducing competition in the wholesale electricity market and conduct thorough feasibility studies, cost-benefit analysis and stakeholder consultation before renewing NBET's bulk electricity trading licence.*</p>   | <p><b>Pending</b></p> <p><b>Work ongoing.</b> The FGN drafted the Gas Flaring (Prohibition and Punishment) Bill 2020 that passed the second reading in the Senate in February 2020. The legislative bill makes it punishable to flare gas after 31 December 2020. It stipulates that any person engaging in the activity must pay a fine commensurate to at least the cost of the gas at the international market.</p> <p>In February 2020, the DPR shortlisted 200 bidding companies for the first phase of the Nigerian Gas Flare Commercialisation Programme. It declared that 45 gas flare sites would be put up for auction. However, due to the COVID-19 pandemic the auctions were put on hold.</p> <p>The FGN has included legally binding provisions to curb flared gas in the recently enacted Petroleum Industry Act 2021.</p> <p><b>Work ongoing.</b> In September 2021, NERC organised a stakeholder meeting for interested members of the public to share their perception and comments on (1) the work undertaken by NBET during its existing ten-year licence duration and (2) the renewal of the bulk electricity purchase and resale licence application submitted by NBET to NERC on 12 February 2021.</p>                   |
| <b>2021</b> | <p>Update (1) the National Renewable Energy Master Plan (2006), (2) the National Renewable Energy and Energy Efficiency Policy (2015), (3) the National Energy Efficiency Action Plan (2016), and (4) the National Renewable Energy Action Plan (2016) to align with the Nigeria Agenda 2050, the NESPA, and the new National Adaptation Plan (NAP) Framework.*</p> <p>Adopt a climate change mitigation and adaptation law to harmonise and consolidate sectoral regulations on climate change and make it legally binding upon the FGN to implement the unconditional targets set out in its new NDC.*</p> | <p><b>Improvement suggested in 2021.</b> Status will be updated in 2022.</p> <p><b>Improvement suggested in 2021.</b> Status will be updated in 2022.</p>   |

## Nigeria

| PROPOSED EIRA AREAS FOR IMPROVEMENT<br>IN | IMPLEMENTATION STATUS AS OF 1 APRIL 2021 |
|---|--|
|---|--|

### Indicator 2

|   |  |
|---|--|
| <p><b>2018</b></p> <p>Conduct regular public consultations and introduce legal provisions that require public consultation by MDAs on draft laws and regulations.</p>   | <p><b>Work ongoing.</b> NERC held public hearings before introducing the revised Multi-Year Tariff Order of 2020 and released for public comments a Consultation Paper setting out the rates proposed by the distribution licensees. It has democratised the newly implemented service-based tariff structure to ensure that distribution companies will only be able to review tariff rates after consultations with the affected customers.</p>                                      |
| <p>Promote better coordination among MDAs on the implementation of the national energy policies and plans.</p>  | <p><b>Work ongoing.</b> Due to the COVID-19 pandemic the ECN could not hold its high-level summit in 2020. However, in 2021, it organised the second National Energy Summit to discuss the issues of energy sufficiency and sustainable economic growth in Nigeria with high-level national and international stakeholders.</p>  |
| <p>Consider publishing all its extractive industry contracts.*</p> <p>Set up a multi-stakeholder body comprising MDAs, academia, civil society organisations, and energy companies to prepare a fact-based cross-sectoral energy transition strategy for the country.*</p>  | <p><b>Pending</b></p> <p><b>Work ongoing.</b> In June 2020, the Ministry of Environment adopted the National Adaptation Plan (NAP) Framework to clarify the country's NAP process and harmonise all the related policy documents with the process. In 2021, it published the new National Climate Change Policy to replace the Nigeria Climate Change Policy Response and Strategy 2012. The FGN also updated its NDC in 2021 to set more ambitious targets than its 2015 version.</p> |
| <p><b>2020</b></p> <p>MDAs must prepare individual energy transition plans with short- and long-term measures to make their operations sustainable. In particular, the NNPC and its subsidiaries must develop concrete steps to reduce the carbon intensity of their products and operations across the value chain. The MDAs must submit semi-annual follow-up reports to the FGN and the National Assembly and make these available to the public.*</p> | <p><b>Pending</b></p>  |

### Indicator 3

|   |  |
|---|--|
| <p><b>2018</b></p> <p>Define the roles and responsibilities of the different regulatory authorities.</p>  | <p><b>Work ongoing.</b> The FGN took the progressive decision of fully deregulating the downstream oil sector. The Petroleum Products Pricing Regulatory Agency, which had previously set a monthly price band for gasoline, is now limited to a supervisory role. In August 2021, the FGN and the National Assembly enacted the Petroleum Industry Act that establishes the Nigerian Upstream Regulatory Commission (NURC) to regulate upstream petroleum activities, including environmental management, and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) for technical and commercial regulation of midstream and downstream petroleum operations.</p> |
| <p>Create a comprehensive legal framework on local content across sectors. Ensure that content targets are based on a realistic estimation of available domestic human resources and technical expertise.</p> | <p><b>Work ongoing.</b> The Local Content Development and Enforcement Bill 2020 recently passed its second reading in the House of Representatives. The Bill seeks to broaden the existing local content requirements for the oil and gas sector and it implements a similar regime for the ICT, power, solid minerals and construction sectors.</p>   |

## Nigeria

| PROPOSED IN        | EIRA AREAS FOR IMPROVEMENT   | IMPLEMENTATION STATUS AS OF 1 APRIL 2021   |                |  |
|--------------------|--|--|----------------|--|
|                    |  | Work ongoing and partially implemented   | Pending        |  |
| 2020               | Cost-reflective electricity tariffs should be applied without further delay.   | <b>Work ongoing and partially implemented.</b> In September 2020, NERC introduced a service-based tariff (SBT) regime. Now, DisCos can review electricity tariffs of metered customers only after consulting them and assuring them of a guaranteed level of electricity service based on hours of supply.   | <b>Pending</b> |  |
|                    | Restructure the additional price-based royalty and increasing water depth-based royalties, other taxes, fees and levies to make the sector more competitive. Planned oil and gas investments may not remain financially viable and this could lead to a decline in production and government revenues. |  |                |  |
|                    | Refurbish outdated power transmission and distribution infrastructure to improve NESI's operational and financial performance.*  | <b>Work ongoing.</b> The TCN has mobilised funding to expand the power transmission infrastructure, primarily through multilateral development banks and international development agencies. The brownfield Nigeria Electricity Transmission Access Project will receive USD 486 million from the World Bank to rehabilitate several existing transmission lines and automate substations. Another key donor-funded project is the Northern Corridor Transmission Project, financed jointly by the Agence Française de Développement (French Development Agency – AFD) and the EU (USD 330 million) to reconstruct a 330 kV SC line from Shiroro to Abuja into a 330 KV quad line. | <b>Pending</b> |  |
|                    | Conduct a fresh review of the MYTO to update and progressively increase the payment requirements of DisCos for the following year. Enforce penalties on DisCos that have failed to meet the minimum remittance requirements for a year or more.*   |  |                |  |
| 2021               | Enact a law curbing electricity theft that imposes financial and other penalties for violations. Review its electricity theft detection incentives and prepare a formal strategy and scheme to boost reporting by citizens.*   | <b>Improvement suggested in 2021.</b> Status will be updated in 2022.  |                |  |
| <b>Indicator 4</b> |  |  |                |  |
| 2018               | Establish a foreign investment ombudsperson to settle conflicts arising in the course of energy projects.  | <b>Pending</b>   |                |  |
|                    | Grant broader protection against expropriation to intangible property such as equity, shares, and IP rights.   |  |                |  |
| 2020               | Define clear rules to regulate the use and enforcement of Third Party Funding agreements.  | <b>Pending</b>   |                |  |
| 2021               | Review the dispute prevention policies and practices of other countries and adapt these in its international agreements and national laws to the extent possible.*   | <b>Improvement suggested in 2021.</b> Status will be updated in 2022.  |                |  |

\*Recommendations provided only in the Extended EIRA profile.



# **ANNEX II:**

# **ORBIS CROSSBORDER**

# **INVESTMENT**

# **GLOSSARY**

# **AND INDUSTRY**

# **CLASSIFICATION**

## Terms used in EIRA 2021 from Orbis Crossborder Investment\*

|  |  |
|--|--|
| <b>Acquisition deal</b>                | A deal in which the acquiror ends up with a stake of 50% or more in the target's equity. Even deals involving the purchase of a very small stake will be defined as an acquisition if the final stake held by the acquiror is 50% or above.  |
| <b>Co-location project**</b>           | The same company (investor) investing into the same location (city) in a different business activity (for example, XYZ company could be setting up a regional distribution centre as well as a manufacturing plant). Sometimes companies will create a new warehouse to complement an existing manufacturing plant.  |
| <b>Completed project status</b>        | If a company has opened a facility or a location that is deemed to be operational, the project will be deemed to have been completed.  |
| <b>Completed deal status</b>           | This is the date when the deal has officially completed.   |
| <b>Institutional buyout (IBO) deal</b> | A deal in which a private equity firm has purchased a stake of 50% or more in a company. As with acquisitions, even deals involving the purchase of a very small stake will be defined as an IBO if the final stake held by the acquiror is 50% or above. The only difference between a standard acquisition and an IBO is that the acquiror in an IBO is a private equity firm. |
| <b>Joint venture deal</b>              | A deal in which two or more companies create a new, jointly owned entity. The two or more companies that have established the new entity continue to exist.  |
| <b>Minority stake deal</b>             | A deal in which the acquiror has purchased a number of shares in the target and the resulting final stake is less than 50%. A deal involving the purchase of a 2% stake could be defined as an acquisition if the acquiror's overall final stake is 50% or more, such as if a buyer increases its stake from 49% to 51%.   |
| <b>New project</b>                     | A new operation, whether it is a manufacturing plant, regional headquarters, sales office, and so on.  |

\*The value of some deals and the CapEx of some projects may be unofficial or modelled by Orbis Crossborder Investment. For more information on the Orbis Crossborder Investment methodology, data collection and definitions please visit <https://www.bvdinfo.com/orbis> (data accessed on 1 July 2021).

# Industry Classification used in EIRA 2021 from Orbis Crossborder Investment

The data for EIRA 2021 is compiled using the following NACE Rev. 2 classes.\*\*

## Electrical energy

|              |                                    |  |
|--------------|------------------------------------|--|
| <b>35.11</b> | <b>Production of electricity</b>   | This class includes the operation of generation facilities that produce electric energy; including thermal, nuclear, hydroelectric, gas turbine, diesel and renewable.   |
| <b>35.12</b> | <b>Transmission of electricity</b> | This class includes operation of transmission systems that convey the electricity from the generation facility to the distribution system.   |
| <b>35.13</b> | <b>Distribution of electricity</b> | This class includes operation of distribution systems (i.e., consisting of lines, poles, meters, and wiring) that convey electric power received from the generation facility or the transmission system to the final consumer.  |
| <b>35.14</b> | <b>Trade of electricity</b>        | This class includes the sale of electricity to the user; activities of electric power brokers or agents that arrange the sale of electricity via power distribution systems operated by others; operation of electricity and transmission capacity exchanges for electric power. |

## Petroleum and gas

|              |  |  |
|--------------|--|--|
| <b>06.10</b> | <b>Extraction of crude petroleum</b>                               | This class includes extraction of crude petroleum oils; extraction of bituminous or oil shale and tar sand; production of crude petroleum from bituminous shale and sand; processes to obtain crude oils: decantation, desalting, dehydration, stabilisation etc.  |
| <b>06.20</b> | <b>Extraction of natural gas</b>                                   | This class includes production of crude gaseous hydrocarbon (natural gas); extraction of condensates; draining and separation of liquid hydrocarbon fractions; gas desulphurisation; mining of hydrocarbon liquids, obtained through liquefaction or pyrolysis.  |
| <b>09.10</b> | <b>Support activities for petroleum and natural gas extraction</b> | This class includes oil and gas extraction service activities provided on a fee or contract basis: <ul style="list-style-type: none"><li>• In exploration services in connection with petroleum or gas extraction, e.g. traditional prospecting methods, such as making geological observations at prospective sites</li><li>• In directional drilling and redrilling; “spudding in”; derrick erection in situ, repairing and dismantling; cementing oil and gas well casings; pumping of wells; plugging and abandoning wells etc.</li><li>• In liquefaction and regasification of natural gas for purpose of transport, done at the mine site</li><li>• In draining and pumping services, on a fee or contract basis</li><li>• In test drilling in connection with petroleum or gas extraction</li></ul> |
| <b>19.20</b> | <b>Manufacture of refined petroleum products</b>                   | This class includes production of motor fuel: gasoline, kerosene etc.; production of fuel: light, medium and heavy fuel oil, refinery gases such as ethane, propane, butane etc.; manufacture of oil-based lubricating oils or greases, including from waste oil; manufacture of petroleum briquettes; blending of biofuels, i.e. blending of alcohols with petroleum (e.g. gasohol); manufacture of peat briquettes; manufacture of hard-coal and lignite fuel briquettes.  |
| <b>49.50</b> | <b>Transport via pipeline</b>                                      | This class includes transport of gases via pipelines. It also includes the operation of pump stations.   |

## **Coal**

|              |  |  |
|--------------|--|--|
| <b>05.10</b> | <b>Mining of hard coal</b>                               | This class includes the mining of hard coal: underground or surface mining, including mining through liquefaction methods; cleaning, sizing, grading, pulverising, compressing etc. of coal to classify, improve quality or facilitate transport or storage; recovery of hard coal from culm banks.  |
| <b>05.20</b> | <b>Mining of lignite</b>                                 | This class includes mining of lignite (brown coal): underground or surface mining, including mining through liquefaction methods; washing, dehydrating, pulverising, compressing of lignite to improve quality or facilitate transport or storage.   |
| <b>08.92</b> | <b>Extraction of peat</b>                                | This class includes peat digging; preparation of peat to improve quality or facilitate transport or storage.   |
| <b>09.90</b> | <b>Support activities for other mining and quarrying</b> | This class includes support services on a fee or contract basis, required for mining of coal and lignite, among other: <ul style="list-style-type: none"><li>• In exploration services, e.g. traditional prospecting methods, such as taking core samples and making geological observations at prospective sites</li><li>• In draining and pumping services, on a fee or contract basis</li><li>• In test drilling and test hole boring</li></ul> |

## **Nuclear energy**

|              |   |   |
|--------------|---|---|
| <b>24.46</b> | <b>Processing of nuclear fuel</b>         | This class includes the production of uranium metal from pitchblende or other ores; smelting and refining of uranium.                                       |
| <b>07.21</b> | <b>Mining of uranium and thorium ores</b> | This class includes mining of ores chiefly valued for uranium and thorium content: pitchblende etc.; concentration of such ores; manufacture of yellowcake. |

\*\* For more information on the NACE Rev. 2 statistical classification of economic activities please visit <https://ec.europa.eu/eurostat/web/nace-rev2>.

Electrical energy, petroleum, gas, coal and nuclear energy are covered by Annex EM I "Energy Materials and Products" of the ECT (as amended).

# **ANNEX III:**

# **EIRA SCORING**

# **GUIDE**

The score for each indicator is the average of its component sub-indicators. The score of each sub-indicator is the average of its underlying questions. The scoring rules for different types of questions are as follows:

## 1. Questions with proportionate scores

This category is scored based on the number of energy policy goals set by the country. In the example given below, the first sub-indicator of Indicator 1 allows the respondents to list the energy priorities of the country. Under the first question, there are nine identified options for respondents to select. Additionally, they are given the opportunity to specify other priorities considered relevant to their respective energy sectors. The response to the first question sets the premise on which the following questions will be answered and scored. For example, a country has set 5 goals. As a result, 20 points are attributed to each of the selected goals for the scoring of the next questions. Subsequently, the respondent identifies an energy strategy document for three out of the five selected goals, and the country receives 60 points on that question. The scores for the third and the fourth questions are calculated likewise. The final score of this sub-indicator is the average scores of its component questions, which in this case is 66.7.

Sample Question Type 1

| INDICATOR 1: FORESIGHT OF POLICY AND REGULATORY CHANGE   | SCORING   | RESPONSE   | SCORE       |
|--|---|--|-------------|
| <b>Sub-indicator 1: Communication of vision and policies</b>   |   |  | <b>66.7</b> |
| <p><b>1. What are the key priorities or goals of the energy sector policy?</b></p> <ul style="list-style-type: none"> <li>a. Energy security [Y/N]</li> <li>b. Power reliability [Y/N]</li> <li>c. Affordability – energy poverty [Y/N]</li> <li>d. Access to energy [Y/N]</li> <li>e. Investment in the energy sector [Y/N]</li> <li>f. CO<sub>2</sub> reduction [Y/N]</li> <li>g. Renewable energy [Y/N]</li> <li>h. Energy efficiency [Y/N]</li> <li>i. Innovation [Y/N]</li> </ul> <p>j. Others issues related to the energy sector<br/>(like air quality, water quality job creation etc.). Please specify.</p> | <p>Not scored</p>   | <p>5 goals selected:<br/>energy security;<br/>power reliability;<br/>access to energy;<br/>CO<sub>2</sub> reduction; and<br/>Innovation</p> <p>(100/5=20 for each<br/>goal in the related<br/>questions)</p> | –           |
| <b>2. Does the country have an energy strategy document for the key priority areas selected above (e.g. a vision document/roadmap etc.)? [Y/N]</b>   | <p>Based on the<br/>number of goals<br/>selected in the<br/>previous question,<br/>proportionate scores<br/>are allocated</p> | <p>Energy strategy<br/>document for 3 goals:<br/>energy security;<br/>CO<sub>2</sub> reduction; and<br/>innovation</p>   | 3x20=60     |

## 2. Binary questions

These questions can be answered with a simple “yes” or “no”. In the example below, the respondent must answer “yes” to all three questions to obtain the highest score. However, the respondent gives two positive answers and a negative one. As a result, the score for the sub-indicator is 66.7.

Sample Question Type 2a

| INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS  | SCORING      | RESPONSE | SCORE       |
|--|--------------|----------|-------------|
| <b>Sub-indicator 1: Regulatory effectiveness</b>   |              |          | <b>66.7</b> |
| <b>1. Does the energy regulator derive its authority from a law? [Y/N]</b>                             | Yes-100 No-0 | Yes      | 100         |
| <b>2. Are the functions and obligations of the energy regulator stated in a law? [Y/N]</b>             | Yes-100 No-0 | No       | 0           |
| <b>3. Does the energy regulator have a budget that is separate from the government's budget? [Y/N]</b> | Yes-100 No-0 | Yes      | 100         |

In some cases, a negative response may yield a high score while a positive answer may be scored 0. In the following example, the respondent must answer “no” to all the questions to obtain the highest score. However, the respondent gives one negative and one positive answer. As a result, the score for the sub-indicator is 50.

Sample Question Type 2b

| INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS   | SCORING      | RESPONSE | SCORE     |
|---|--------------|----------|-----------|
| <b>Sub-indicator 2: Restrictions on FDI</b>   |              |          | <b>50</b> |
| <b>1. Are foreign investors required by law to partner with State/ State-owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]</b> | Yes-0 No-100 | No       | 100       |
| <b>2. Are foreign investors required to purchase a certain percentage/ value/quantity of products or services from local suppliers? [Y/N]</b>                               | Yes-0 No-100 | Yes      | 0         |

### 3. Questions with alternative responses and granulated scores

In some cases, the respondent is asked to select an answer from a group of alternatives. The answer reflecting best practice is scored 100, whereas the score for the rest of the options is granulated. In the table below, the respondent states that only some legal and regulatory information is made available. This alternative is not considered optimal and, thus, yields only 50 points. In the following question, the respondent states that laws and regulations are accessible both electronically and in print. This is considered best practice and gets a score of 100. Similarly, the respondent answers that the energy regulator makes available all its decision to the public, which again is considered best practice and gets 100. The overall score for this sub-indicator is 83.3.

Sample Question Type 3

| INDICATOR 2: MANAGEMENT OF DECISION-MAKING PROCESSES   | SCORING | RESPONSE | SCORE       |
|--|---------|----------|-------------|
| <b>Sub-indicator 1: Transparency</b>   |         |          | <b>83.3</b> |
| <b>1. Does the country make available legal and regulatory information to the public?</b>  |         | 1-b      | 50          |
| a. Yes, all information is made available  | 100     |          |             |
| b. Only some information is available  | 50      |          |             |
| c. No information is available   | 0       |          |             |
| <b>2. How are laws and regulations made accessible to public?</b>  |         | 2-a      | 100         |
| a. Both electronically and in print  | 100     |          |             |
| b. Only electronically   | 66.7    |          |             |
| c. Only in print   | 33.3    |          |             |
| d. Available only upon request/or payment of fee   | 0       |          |             |
| <b>3. Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?</b> |         | 3-a      | 100         |
| a. Yes, all decisions are made available   | 100     |          |             |
| b. Only some decisions are made available  | 50      |          |             |
| c. No decisions are made available   | 0       |          |             |

## 4. Questions with alternative sub-questions

This type of question provides alternatives to the respondents, in case a negative answer to the main question is compensated by other measures. In the example provided below, the respondent claims that investors need authorisation before investing in the energy sector. Since this imposes a restriction on investors, the answer to the main question gets a 0. Where the prior authorisation requirement results in restrictiveness but is not discriminatory in nature, 50 points are “recovered” by answering “yes” to question 1a.

### Sample Question Type 4

| INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS   | SCORING      | RESPONSE | SCORE     |
|---|--------------|----------|-----------|
| <b>Sub-indicator 2: Restrictions on FDI</b>   |              |          | <b>50</b> |
| <b>1. Is there a pre-screening or prior-authorisation requirement for investing in the energy sector? [Y/N]</b> | Yes-0 No-100 | Yes      | 0         |
| <b>If yes:</b><br><b>1a. Is pre-screening applicable to both domestic and foreign investors? [Y/N]</b>          | Yes-50 No-0  | Yes      | 50        |

## 5. Divided questions

For some sub-indicators the main question is bifurcated into sub-questions, which are awarded identical scores since they are equally important. The sub-questions develop a joint perfect score of 100, when answered positively. In the example below, the country scores 50 because it is a Contracting Party only to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

### Sample Question Type 5

| INDICATOR 4: RULE OF LAW (COMPLIANCE WITH NATIONAL AND INTERNATIONAL OBLIGATIONS)                                      | SCORING     | RESPONSE | SCORE     |
|--|-------------|----------|-----------|
| <b>Sub-indicator 1: Management and settlement of investor-State disputes</b>   |             |          | <b>50</b> |
| <b>1. Is the country a Contracting Party to:</b>   |             |          |           |
| <b>1a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? [Y/N]</b> | Yes-50 No-0 | Yes      | 50        |
| <b>1b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards? [Y/N]</b>                         | Yes-50 No-0 | No       | 0         |



# **ANNEX IV:**

## **EIRA**

# **QUESTIONNAIRE**

## **2021**



## Indicator 1: Foresight of policy and regulatory change

| QUESTIONS  | CLARIFICATIONS TO QUESTIONS  | SCORING                                  |
|--|--|--|
| <b>Sub-indicator 1.1: Communication of vision and policies</b>   |  |  |
| <b>1.1.1 What are the key priorities or goals of the energy sector policy?</b><br>a. Energy security [Y/N]<br>b. Power reliability [Y/N]<br>c. Affordability – energy poverty [Y/N]<br>d. Access to energy [Y/N]<br>e. Investment in the energy sector [Y/N]<br>f. CO <sub>2</sub> reduction [Y/N]<br>g. Renewable energy [Y/N]<br>h. Energy efficiency [Y/N]<br>i. Innovation [Y/N]<br>j. Others issues related to the energy sector<br>(like air quality, water quality job creation etc). Please specify. | This is not an exhaustive list and countries are only expected to tick the boxes relevant to them. Countries may add priorities or goals not listed.             | Not scored                               |
| <b>1.1.2 Does the country have an energy strategy document for the key priority areas selected above (e.g. a Vision document/ Roadmap)? [Y/N]</b>  | Kindly provide details of the energy strategy (such as date when the document was endorsed). Please also provide a link to the document or send the pdf version. | Based on the number of goals selected    |
| <b>1.1.3 Has the country set any short-, medium- term targets for the priority areas selected above? [Y/N]</b>   | This may include any specific short-, medium-term outcomes/targets for the energy sub-sectors.   | Based on the number of goals selected    |
| <b>1.1.4 Has the country set any ultimate/final outcomes for the priority areas selected above? [Y/N]</b>  | This may include any specific final outcomes or end game for the energy sub-sectors.   | Based on the number of goals selected    |
| <b>1.1.5 Is there a timeframe for achieving the ultimate/final outcomes for the priority areas selected above? [Y/N]</b>   |  | Based on the number of goals selected    |
| <b>1.1.6 Is there a binding national action plan in place for implementing the priorities selected above? [Y/N]</b>  |  | Based on the number of goals selected    |
| <b>1.1.7a Is the country a party to the United Nations Paris Climate Agreement? [Y/N]</b>  |  | Yes-50 No-0                              |
| <b>1.1.7b If yes, does the country's NDC contain details on energy sector CO<sub>2</sub> contribution? [Y/N]</b>   |  | Yes-50 No-0                              |
| <b>Sub-indicator 1.2: Robustness of policy goals and commitments</b>   |  |  |
| <b>1.2.1 Is there a body responsible for monitoring the implementation of each energy priority? [Y/N]</b>  |  | Based on the number of goals selected    |
| <b>1.2.2 Is the monitoring body independent of the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]</b>   | For instance a technical/statistics body.  | Based on the number of monitoring bodies |
| <b>1.2.3 Is the monitoring body required to provide feedback to the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]</b>  |  | Based on the number of monitoring bodies |
| <b>1.2.4 Is there a legal provision that allows the government to review the energy priorities selected above, and sets out the process in which the review should be performed? [Y/N]</b>   | Please provide relevant legal acts/provisions.   | Yes-100 No-0                             |
| <b>Additional remarks:</b><br>Are there any regulatory measures/legal changes that you anticipate in the coming year? Please describe.   |  |  |

## Indicator 2: Management of decision-making processes

| QUESTIONS  | CLARIFICATIONS TO QUESTIONS  | SCORING   |
|--|--|---|
| <b>Sub-indicator 2.1: Institutional governance</b>   |  |   |
| <b>2.1.1 Indicate the levels of government involved in framing energy legislation:</b><br>a. Central government [Y/N]<br>b. Provincial [Y/N]<br>c. Municipal [Y/N]<br>d. More than 3 [Y/N]<br>e. How many levels are involved in total?                                    |  | For one level<br>100<br>For two levels<br>50<br>For three levels<br>25<br>For more than three levels<br>0 |
| <b>2.1.2 Is there a central authority responsible for the overall energy policy formulation process? [Y/N]</b>   | Please provide the name of the institution and its website.  | Yes-100 No-0  |
| <b>2.1.3 Is there a central authority responsible for the overall investment policy formulation process? [Y/N]</b>   | Please provide the name of the institution and its website.  | Yes 100 No-0  |
| <b>2.1.4 Do the energy and investment authorities consult each other while formulating policies related to their respective sectors? [Y/N]</b>   | This includes consultation within working groups, etc.   | Yes-100 No-0  |
| <b>2.1.5 Is there an authority responsible for the overall implementation and monitoring of the country's NDC? [Y/N]</b>   | Please provide the name of the institution and its website.  | Yes-100 No-0  |
| <b>2.1.6 Is there a process that requires the government to periodically review the implementation of its NDC? [Y/N]</b>   |  | Yes-100 No-0  |
| <b>2.1.7a Has the country established a one-stop shop investment approval authority? [Y/N]</b>   | Please provide the name of the institution and its website.  | Yes-50 No-0   |
| <b>2.1.7b If yes, does it also give approval for the energy sector? [Y/N]</b>  |  | Yes-50 No-0   |
| <b>2.1.8a Is there a single window for all enquiries concerning investment policies and applications? [Y/N]</b>  | Please provide the name of the institution and its website.  | Yes-50 No-0   |
| <b>2.1.8b If yes, does it also give information for the energy sector? [Y/N]</b>   |  | Yes-50 No-0   |
| <b>Sub-indicator 2.2: Transparency</b>   |  |   |
| <b>2.2.1 Does the country have a law on transparency? [Y/N]</b>  |  | Yes-100 No-0  |
| <b>2.2.2a Do exceptions to transparency rules exist? [Y/N]</b>   | Such exceptions can include national security, public interest, law and order etc.   | Yes-0 No-100  |
| <b>2.2.2b If yes, are these exceptions clearly defined in law or regulation? [Y/N]</b>   |  | Yes-100 No-0  |
| <b>2.2.3 Does the country make available legal and regulatory information to the public?</b><br>a. Yes, all the information is made available<br>b. Only some of information is made available<br>c. No information is made available                                      | Legal and regulatory information includes enacted laws, draft laws, regulations, draft regulations. If the information is limited, please state reasons for this answer. | 100<br>50<br>0  |
| <b>2.2.4 How is law and regulation made accessible to the public? [Y/N]</b><br>a. Both electronically and in print<br>b. Only Electronically<br>c. Only in print<br>d. Available only upon request or payment of fee   | On request means investors can approach public authorities for hard copies.  | 100<br>66.7<br>33.3<br>0  |
| <b>2.2.5 Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?</b><br>a. Yes, all the decisions are made available<br>b. Only some decisions are made available<br>c. No decisions are made available |  | 100<br>50<br>0  |

| QUESTIONS  | CLARIFICATIONS TO QUESTIONS  | SCORING        |
|--|--|----------------|
| <b>2.2.6 Are energy strategy documents and national plans available in any of the UN languages? [Y/N]</b>  | The UN languages are Arabic, Chinese, English, French, Russian and Spanish.<br>For the purpose of this question, unofficial translations are not relevant.             | Yes-100 No-0   |
| <b>2.2.7 Are enacted laws available in any of the UN languages? [Y/N]</b>  | The UN languages are Arabic, Chinese, English, French, Russian and Spanish.<br>For the purpose of this question, unofficial translations are not relevant.             | Yes-100 No-0   |
| <b>2.2.8 Do the bodies responsible for monitoring and implementing energy priorities/objectives publish their data? [Y/N]</b>  | This question refers to monitoring bodies mentioned in question 1.2.1.   | Yes-100 No-0   |
| <b>2.2.9 Is legal information centralised?</b><br>a. In an electronic centralised registry of laws and regulations<br>b. Centralised registry/official gazette in print<br>c. No centralisation of laws and regulations    |  | 100<br>50<br>0 |
| <b>2.2.10 Is consultation between the government and the stakeholders required under any law/regulation/rule? [Y/N]</b>  | Stakeholders may include affected public and private investors, energy agencies, local government administration, non-governmental organisations, and wider community. | Yes-100 No-0   |
| <b>2.2.11 Is consultation between the energy regulator and the stakeholders required under any law/regulation/rule? [Y/N]</b>  |  | Yes-100 No-0   |
| <b>2.2.12 Are stakeholders notified and consulted in advance when new laws and regulations are enacted? [Y/N]</b><br>a. Notified and consulted in advance<br>b. Notified but not consulted<br>c. Not notified or consulted |  | 100<br>0<br>0  |
| <b>Additional remarks:</b><br>Are there any concerns regarding the transparency in the country or its decision making that you wish to highlight? Please describe.   |  |                |

## Indicator 3: Regulatory environment and investment conditions

| QUESTIONS   | CLARIFICATIONS TO QUESTIONS   | SCORING        |
|---|---|----------------|
| <b>Sub-indicator 3.1: Regulatory effectiveness</b>  |   |                |
| <b>3.1.1 Which institution is responsible for regulating the energy sector?</b><br>a. A separate energy regulatory body<br>b. An agency under the control of the Ministry<br>c. A Ministry<br>d. Multiple ministries/agencies regulating sub-sectors separately | Hereafter referred to as 'the energy regulator'.  | Not scored     |
| <b>3.1.2* Does the energy regulator derive its authority from a law? [Y/N]</b>  | Please provide the name of the legal act which establishes the energy regulator.  | Yes-100 No-0   |
| <b>3.1.3* Are the functions and obligations of the energy regulator stated in a law? [Y/N]</b>  | Please provide the name of the legal act which specifies the obligations of the energy regulator.                                     | Yes 100 No-0   |
| <b>3.1.4* Is the energy regulator subject to the public control conducted by other institutions?</b><br>a. Supreme Audit Office which is independent from the central government and/or Parliament<br>b. Governmental institution<br>c. None of the above       |   | 100<br>0<br>0  |
| <b>3.1.5* Does the energy regulator have a budget that is separate from the government's budget? [Y/N]</b>  | This means the budget is not determined by the government.  | Yes-100 No-0   |
| <b>3.1.6* Does the energy regulator have a dedicated budget for itself? [Y/N]</b>   | Dedicated budget means that the energy regulator is not required to transfer or share its funds with any other governmental entities. | Yes-100 No-0   |
| <b>3.1.7* Does the energy regulator have the right to allocate its budget?</b><br>a. Yes, it has full right to do so<br>b. Yes, but it needs approval from the governmental/ministry<br>c. No, it cannot allocate the budget on its own                         |   | 100<br>50<br>0 |
| <b>3.1.8a* Is there a fixed term appointment for the board of the energy regulator? [Y/N]</b>   |   | Yes-50 No-0    |
| <b>3.1.8b* If so, is the term renewable more than once? [Y/N]</b>   |   | Yes-0 No-50    |
| <b>3.1.9* Is the selection procedure of the board and its finalisation publicly announced? [Y/N]</b>  |   | Yes-100 No-0   |
| <b>3.1.10a Does the energy regulator deal with competition issues? [Y/N]</b>  |   | Yes-100 No-0   |
| <b>3.1.10b If no, is there a separate governmental body dealing with competition issues, including the energy sector? [Y/N]</b>   |   | Yes-100 No-0   |
| <b>Sub-indicator 3.2: Restrictions on FDI</b>   |   |                |
| <b>3.2.1a Does the country give equal treatment to domestic and foreign investors? [Y/N]</b>  | Please provide legal acts which grant equal treatment to domestic and foreign investors.  | Yes-50 No-0    |
| <b>3.2.1b If yes, is this equal treatment established in law? [Y/N]</b>   |   | Yes-50 No-0    |
| <b>3.2.2a Are investors in the energy sector allowed to invest in all zones or regions within the country? [Y/N]</b>  | This can include restrictions on undertaking activities in the Exclusive Economic Zones, special economic zones, free trade zones.    | Yes-100 No-0   |
| <b>3.2.2b If no, is this applicable to domestic and foreign investors alike? [Y/N]</b>  |   | Yes-50 No-0    |

\* For electricity and hydrocarbon regulators

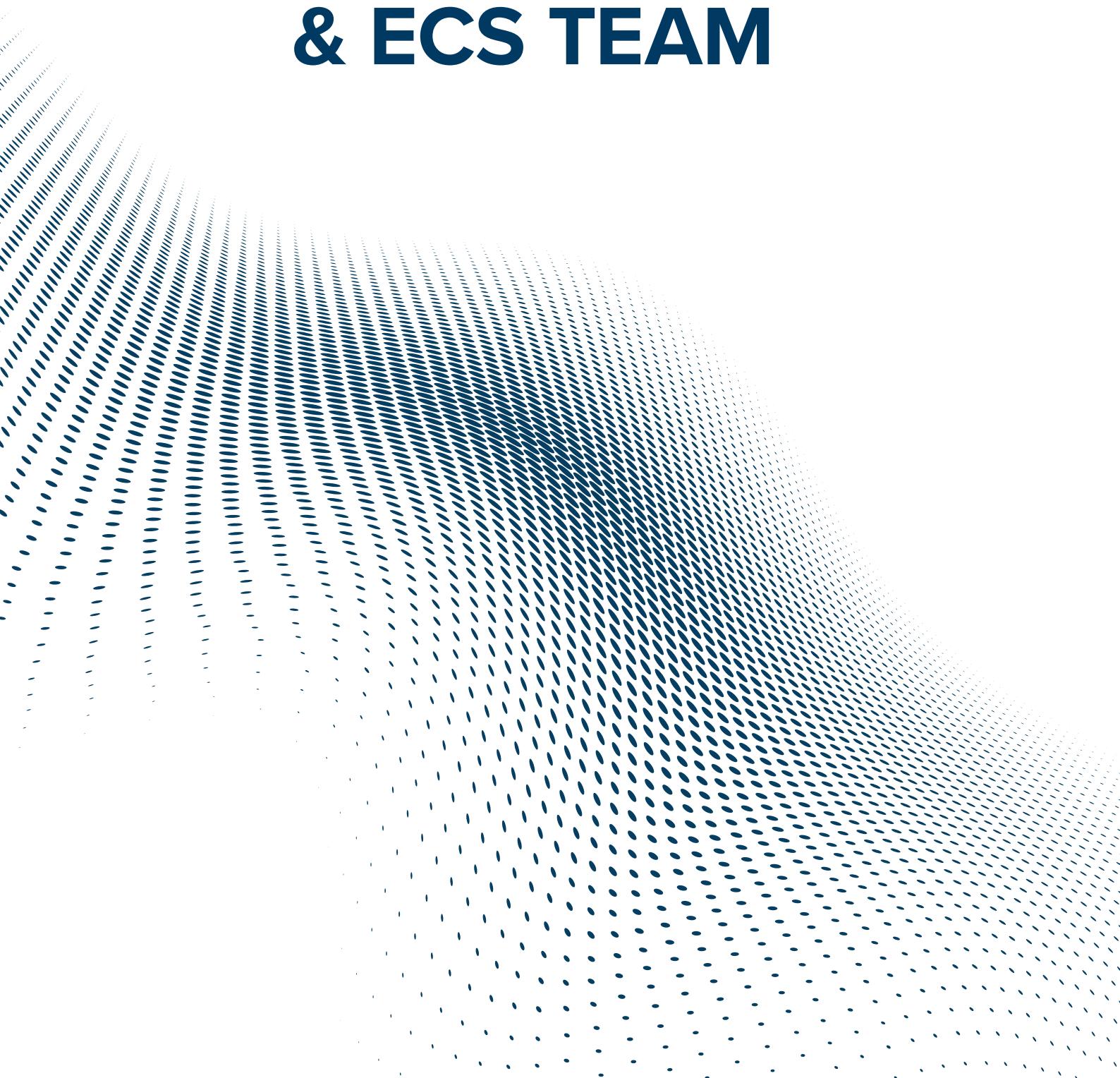
| QUESTIONS   | CLARIFICATIONS TO QUESTIONS   | SCORING       |
|---|---|---------------|
| <b>3.2.3a Is there a pre-screening or prior-authorization requirement for foreign investors in the energy sector? [Y/N]</b>   | Screening mechanisms include requiring the foreign investors to show that the project is in the national interest of the Host State. However, in some cases, they are automatic and amount to a simple pre-notification requirement for investors.  | Yes-0 No-100  |
| <b>3.2.3b If yes, is it only a notification requirement? [Y/N]</b>  |   | Yes-50 No-0   |
| <b>3.2.4 Are foreign companies legally allowed to hold a majority stake in energy projects? [Y/N]</b>   |   | Yes-100 No-0  |
| <b>3.2.5 Are foreign investors required by law to partner with the State/State-owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]</b>   |   | Yes-0 No-100  |
| <b>3.2.6 Are there limitations on the employment of foreign personnel?</b><br>a. There are no limitations [Y/N]<br>b. Limitation by percentage [Y/N]<br>c. Limitation on the number of times work permit/visa can be renewed [Y/N]  |   | 100<br>0<br>0 |
| <b>3.2.7 Are foreign investors required to employ specific percentages of local work force?</b><br>a. There are no such requirements [Y/N]<br>b. Yes, for the managerial level (board of directors etc.) [Y/N]<br>c. Yes, for the unskilled labour and non-technical/administrative staff [Y/N] |   | 100<br>0<br>0 |
| <b>3.2.8 Are foreign investors required to purchase a certain percentage/value/quantity of products or services from local suppliers? [Y/N]</b>   | Local content provisions require foreign investors to purchase a minimum threshold of goods (e.g. raw materials) and services (e.g. human resources) locally.   | Yes-0 No-100  |
| <b>3.2.9a Are there any currency restrictions and/or foreign exchange controls applied to foreign investors under a law or regulation? [Y/N]</b>  |   | Yes-0 No-100  |
| <b>3.2.9b If yes, do these exchange controls include:</b><br>a. Banning use of foreign currency? [Y/N]<br>b. Limiting currency exchange to government approved exchangers? [Y/N]<br>c. Fixed exchange rates? [Y/N]  |   |               |
| <b>3.2.10a Do restrictions on the transfer of investment related capital, payments and profits exist?</b>   | e.g. profits, dividends, interest and royalty receipts, original capital, capital appreciation, proceeds from liquidation, payments received as compensation for property expropriation, settlement of disputes etc., and earnings of personnel engaged from abroad in connection with an investment. | Yes-0 No-100  |
| <b>3.2.10b If yes, do they apply equally on foreign and domestic investor?</b>  |   | Yes-50 No-0   |
| <b>Additional remarks:</b><br>Are there any measures by the regulator or restrictions on investment you wish to highlight? Please describe.   |   |               |

## Indicator 4: Rule of Law (compliance with national and international obligations)

| QUESTIONS  | CLARIFICATIONS TO QUESTIONS  | SCORING                    |
|--|--|----------------------------|
| <b>Sub-indicator 4.1: Management and settlement of investor-State disputes</b>   |  |                            |
| <b>4.1.1 Is the jurisdiction for hearing contractual disputes with foreign investors defined in the domestic law? [Y/N]</b>  |  | Yes-100 No-0               |
| <b>4.1.2 Is there a separate mechanism for appealing against regulatory decisions?</b><br>a. Yes, appeals can be heard by the regulator in the first instance<br>b. Appeals can only be heard by general courts<br>c. There is no appeal process                 |  | 100<br>50<br>0             |
| <b>4.1.3 Are national courts and administrative tribunals required by law to deliver decisions within a defined time limit? [Y/N]</b>  |  | Yes 100 No-0               |
| <b>4.1.4 Is arbitration included in:</b><br>a. An investment law<br>b. A separate arbitration law<br>c. As a chapter/section in the code of civil procedure<br>d. There is no law that refers to arbitration   |  | 100<br>100<br>100<br>0     |
| <b>4.1.5 Is voluntary mediation, conciliation or both included in:</b><br>a. An investment law<br>b. Arbitration and mediation law<br>c. As a chapter/section in the code of civil procedure<br>d. There is no law that refers to mediation and/or conciliation  |  | 100<br>100<br>100<br>0     |
| <b>4.1.6 Is there an investment ombudsman to whom foreign investors can refer disputes with the government? [Y/N]</b>  | Please provide the name of the institution and its website.  | Yes-100 No-0               |
| <b>4.1.7a Do national laws allow the recognition and enforcement of foreign judgments? [Y/N]</b>   |  | Yes-50 No-0                |
| <b>4.1.7b If yes, then are these laws equally applicable to different jurisdictions? [Y/N]</b>   |  | Yes-50 No-0                |
| <b>4.1.8 Do national laws and/or International Investment Agreements require exhaustion of local remedies (e.g. domestic courts) before recourse to international arbitration? [Y/N]</b>   | Foreign investors are required to go through the administrative and judicial system of the State before initiating international proceedings directly against the State. | Yes-0 No-100               |
| <b>4.1.9 Has the country made retroactive changes to its laws in the past 5 years? [Y/N]</b>   |  | Yes-0 No-100               |
| <b>4.1.10 Is the country a Contracting Party to:</b><br>a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? [Y/N]<br>b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards? [Y/N] |  | Yes-50 No-0<br>Yes-50 No-0 |
| <b>Sub-indicator 4.2: Respect for property rights</b>  |  |                            |
| <b>4.2.1 Are the criteria for 'public interest' as grounds for expropriation clearly stated? [Y/N]</b>   | Please provide the legal act that specifies these criteria.  | Yes-100 No-0               |
| <b>4.2.2 Does the State provide in its laws and/or its International Investment Agreements a process for determining compensation in the event of expropriation in the energy sector? [Y/N]</b>  | e.g., determination of compensation by independent auditors.   | Yes-100 No-0               |
| <b>4.2.3 Does the State provide in its laws and/or its International Investment Agreements a time frame within which compensation needs to be paid? [Y/N]</b>  | Please provide the law which states this time frame.   | Yes-100 No-0               |

| QUESTIONS   | CLARIFICATIONS TO QUESTIONS                           | SCORING                    |
|---|---|----------------------------|
| <b>4.2.4a Does the State include in its laws and/or International Investment Agreements protection against the expropriation of intellectual property rights? [Y/N]</b>   |   | Yes-50 No-0                |
| <b>4.2.4b Is the country a Member State of the World Intellectual Property Organization? [Y/N]</b>  |   | Yes-50 No-0                |
| <b>4.2.5 Does the State have in its laws and/or International Investment Agreements any provisions restricting the transfer of technology in the energy sector? [Y/N]</b> | Please provide the law which states this restriction. | Yes-0 No-100               |
| <b>4.2.6 Is the country a Member State/Contracting Party to:</b><br>a. The World Trade Organization? [Y/N]<br>b. The Energy Charter Treaty? [Y/N]                         |   | Yes-50 No-0<br>Yes-50 No-0 |
| <b>Additional remarks:</b><br>Are there any risks related to investor state disputes in the energy sector which you anticipate? Please describe.                          |   |                            |

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Ishita joined the EIRA team in 2017. As the project manager of EIRA, she oversees its schedule and guides the data collection process, research and analysis, policy recommendations, and the editorial and layout aspects. In 2019, she supervised the development of the EIRA website and now manages its content upload.

In addition to the annual EIRA reports, Ishita has authored the EIRA extended risk profiles of Nigeria (2018-2020) launched by the ECN at Nigeria's first and second National Energy Summits. Currently, she is developing The Gambia's 2021 EIRA extended risk profile in collaboration with the country's Ministry of Petroleum and Energy and the ECOWAS Commission.

Since 2019, Ishita has led discussions with the Energy Charter Conference Members and Observers to include the following new topics in EIRA: achieving the clean energy transition and increasing competition in the electricity markets. In 2021, the Energy Charter Conference approved EIRA's new scope and methodology to be implemented from 2022 onwards.

Ishita is an Investment Coordinator at the International Energy Charter. She is a common law qualified lawyer and holds an LL.M. degree in Energy and Natural Resources Law from the Queen Mary University of London. Before joining the International Energy Charter, she worked as in-house counsel for French-based Air Liquide. Her areas of specialisation are energy, projects and infrastructure, and regulated industries.

### MONICA EMMANUEL

Monica joined the Energy Charter Secretariat as the Expansion Coordinator for Africa. She coordinates communication with the ECOWAS Commission and countries under the East African Community and ECOWAS on activities and technical assistance projects, including EIRA. She has facilitated the signature of the ECOWAS Commission, Nigeria, and The Gambia to the International Energy Charter political declaration.

She has also developed the high-level ECOWAS-EU-ECS Energy cooperation by securing for the Secretariat a voluntary contribution under the EU-ECOWAS-AGoSE project for improving energy governance in West Africa. The contribution has been utilised for developing this ECOWAS-Nigeria EIRA Extended Profile.

Monica holds a Doctorate Degree in International Relations from the Geneva School of Diplomacy and International Relations in Switzerland. Before joining the Secretariat, she worked with various national and international organisations across Africa and Europe for several years, including as a Research Fellow with the African Centre for Strategic Research and Studies, National Defence College Abuja, Nigeria. She has authored the book Federalism in Nigeria: Between Divisions in Conflict and Stability in Diversity. Her areas of expertise are international relations and diplomacy, programme management, capacity building, research and training, peace and conflict studies, focusing on Africa.



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